1944 K

File No. S. Kan. 1/145

Agent DEPARTMENT

A BRANCH

Examined

Subject:— In the Court of the First Class Sub. Judge Karwar

Civil Suit No 111 of 1944

Mukund Narayan Prabhu Sirurkar and 4 others Plaintiff

Versus

The Province of Bombay Defendant

Claim Rs 2000

Re— For Damages for wrongful attachment

C.A. 189 of 1945

S.A. No. 179 of 1944

P. 80
K-E

File No. S. Kan. 1/45

Std Sectt. Slip 24-B

CONTENTS.

Legal Department File No. S...kanara 1/45

| Sr. No. | Compilation No. | Subject | Pages. |
|---|---|---|---|
| | | Suits Kanara. | |
| | | C.S. No. 111 of 1944. | |
| | | Mukund Narayan Prabhu Sirurkar and 4 others. | |
| | | vs. | |
| | | Province of B'bay. | |
| | | claim — Rs. 2000. | |
| | | For damages for wrongful attachment. | |
| 1. | Printed I.D.G.R. No. 236 dt. 9-1-45. | Sanctioning the defence of the suit. | 21. |
| 2. | I.D.G.R. No. 9076 dt. 5-12-45 | Sanctioning the institution of an appeal. | 51. |
| 3. | I.D.G.R. No. 407 dt. 13-1-47 | Sanctioning the institution of a second appeal. | 93. |
| 4. | I.D.G.R. No. 8563 dt. 29-7-49. | Recording the result of the appeal. | 95. |

Submitted.

2. It appears that an order for the arrest and detention of one Dayanand alias Ramchandra Mukund Prabhu was issued on 7th October 1942 under rule 26(1)(b) of the Defence of India Rules. As it was reported that the said Dayanand Prabhu was absconding to evade arrest and detention, the District Magistrate, Kanara, under powers delegated to him, made a report to the Sub-Divisional Magistrate, Karwar Town on 26th October 1942 as per rule 26(5)(B)(a) of the Defence of India Rules directing him to take action under sections 87 and 88 of the Criminal Procedure Code. On the same day a notification was also issued by the District Magistrate, Kanara, under rule 26(5)(B)(b) directing the absconder Dayanand Prabhu (along with 13 others) to appear before the Sub-Divisional Magistrate, Karwar Town, within one month from the date of the Order. The Sub-Divisional Magistrate, Karwar Town, thereupon directly issued an order under section 88 of the Criminal Procedure Code for the attachment of movables belonging to the absconder without first issuing a proclamation under section 87 of the Criminal Procedure Code. The said Order directed the Sub-Inspector of Police Ankola, to attach the movables of the absconder in the village Shirur, Ankola Taluka. The Sub-Inspector of Police, Ankola, however attached some moveable property from the house at Siroor as well as from the shop at Ankola both owned by the father of the absconder (who is the Karta of the joint family). The proceedings were in the meanwhile transferred to the Court of the First Class Magistrate, Ankola, to whom a claim petition was made on the 15th March 1943 by Mukund Narayan Prabhu and other members of the joint family in respect of the said attached property. The Court ordered the release of the attached property the punch value of the same having been deposited by the claimants in the Court. Finally the First Class Magistrate, Ankola, ordered that the attached movables should be released to the claimants as the same were pertaining to the joint family and on 8th February 1944 the deposit amount was refunded to the ---

* p. 2 in the File below

* p. 1 in the File below "

c p. 3 " "

p. 5 " "

pp. 37-43 " "

p. 87 "

claimants. The Pleader of these claimants has now served a notice to Government under section 80 of the Civil Procedure Code claiming Rs. 2073/- as damages for the wrongful attachment of their properties, and a suit has also been already filed by the party on 10th April 1944. The District Government Pleader, Kanara, who was consulted in the matter, has surveyed the whole case, raising two main points for the consideration of the R.L.A., namely:-

pp. 5-11 ante

p. 3 ante

pp. 15-17 ante

(1) whether, without taking action under section 87 of the Criminal Procedure Code, further proceedings under section 88 of the Criminal Procedure Code are legal; and

(2) whether Government is responsible for the acts done by its subordinates.

The Collector of Kanara has referred the case to the R.L.A. through the Home Department for his opinion on the above points udner rule 114(3) of the Law Officers' Rules.

3(i) Section 88 of the Criminal Procedure Code lays down that "the Court issuing a proclamation under section 87 may at any time order the attachment of any property, movable or immovable, belonging to the proclaimed person." Under this section, the Court levying attachment should be the Court issuing the proclamation. The Court must therefore first observe the provisions laid down in section 87 before passing the attahment order under section 88. In this case, the provisions of section 87 were not duly observed which would vitiate the subsequent proceedings, as a failure to fulfil any one of the three requirements of section 87 amounts to failure of justice within the meaning of section 537 of the Criminal Procedure Code (Please see A.I.R. 1942 Lahore 214). It is alleged that the Police Sub-Inspector, Ankola, went beyond the terms of the warrant by attaching the movables at Ankola and that the warrant was also irregular, but these irregularities will be met with by section 538 of the Criminal Procedure Code, which lays down that "no attachment made under this Code shall be deemed unlawful, nor shall any person making the same be deemed a trespasser on account of any

× Volume put up (Cal. R.)

defect or want of form in the summons, conviction, writ of attachment or other proceedings relating thereto.

(ii) This suit is filed against the Province of Bombay for the recovery of damages alleged to be sustained by the plaintiffs due to the attachment of movables at Ankola carried out by the Police Sub-Inspector, Ankola, and other alleged irregularities in the attachment order etc. It is now a well established principle of law that an action in tort does not lie against Government. Further, Government cannot be held liable for any tortious acts of its subordinates. (Please see 28 Bom. 314; 37 Mad 55; I.L.R. 1939 Mad. 843; 51 Bom. 749; 5 Luck. 157). Under the circumstances, it appears that the suit is defensible.

S.A.G. 21/6 P.A.

[redacted].

A notice of suit under section 80 of the Civil Procedure Code, claiming damages for alleged wrongful attachment levied by some Government officers, having been served upon the Collector of Kanara, he has referred for the opinion of the R.L.A. , under rule 114 of the Law Officers Rules, certain points raised by the notice.

2. The facts are stated in para. 2 of the office note. The Collector's letter is at page 3.

3. Under the Criminal Procedure Code, the Court which makes an order under section 88 is "the Court issuing a proclamation under section 87". It is therefore clear that when a warrant of arrest has been issued under the provisions of the Code and the person is absconding, his property cannot legally be attached under section 88 in the absence of a proclamation under section 87. (14 Bom LR 163)

4. Rule 26(5B) of the Defence of India Rules provides that when an order directing the detention of a person under rule 26(1)(b) has been made and the person is absconding, the Government or the District Magistrate to

whom the power has been delegated may -

(a) make a report to a magistrate; and thereupon the provisions of sections 87, 88 and 89 of the Code of Criminal Procedure shall apply in respect of the said person and his property as if the order directing that he be detained were a warrant issued by the Magistrate;

(b) by notified order direct the said person to appear before such officer, at such time and and within such period as may be specified in the order.

5. It has to be observed that the contents of the notification prescribed in para. (b) above are the same as those of the proclamation under section 87. In the present case the District Magistrate published a notification on 26th October 1942 requiring the person concerned to appear before the Sub-Divisional Magistrate within one month of the order and at the same time made a report to the latter as provided for by para. (a). Thereafter the latter issued an order under section 88 on 26th November 1942.

6. In view of the fact that the contents of the notification under said para (b) and the proclamation under section 87 of the Criminal Procedure Code are the same, it is difficult to consider that the legislature intended the proclamation to be indespensable even when there had been a previous notification. Such duplication or legal formalities would be altogether purposeless.

7. Therefore it can be contended when defending the suit that the omission to issue a proclamation under section 87 would not in this case make the proceedings under section 88 invalid.

8. It is not necessary to consider at length the second question stated by the Collector. The civil irresponsibility of Government for the tortious acts of its subordinates is now well settled in law. Shivbhanjan v. Secretary of State, 28 Bom. 314; P & O Steam Navigation Co v. Secretary of State 5 Bom. H.C. Appx. 1, Ross v. Secretary of State 37 Mad. 55 and in appeal 39 Mad 781; Etti v. Secretary of State I.L.R. 1939 Mad. 843; etc.

5

9 No civil courts be dependable whatever views the Courts might take on the first question

27/6

RLA

A/ of P.A.'s note seems doubtful. Will A'Asstt please note on it

P.Rau
30/6/44

SAS

In pursuance of the power delegated to the D.Ms., the D.M. Kanara, issued an order under rule 26(1)(b) of the D. of I.Rules for the arrest and detention of one Dayanand alias Ramchandra Mukund and others on 7-10-42. Since the said persons were reported to have been absconding with a view to avoid execution of the said order dated 7-10-42, the D.M. Kanara, in his letter No.4905/6/5 dated 26-10-42 reported the matter to the Sub-Divisional Magistrate, I Class, Karwar Town, as required by rule 26(5B)(a) of the D.of I. Rules, and requested him to take action against those persons and their property under sections 87 and 88 of the Code of Criminal Procedure, 1898. The D.M.,Kanara, further issued an Order No.4905/6/5,dated 26-10-42, under rule 26(5B)(b) of the D.of I.Rules, directing that the persons mentioned therein should appear before the Sub-Divisional Magistrate, Karwar Town at Karwar within one month from the date of the order. It appears that the Sub-Divisional Magistrate, Karwar Town, without first issuing a written proclamation under section 87 of the Code pf Cr.Pro.,1898, issued an order on 26-11-42 under section 88 authorising the Sub-Inspector of Police, Ankola, to attach the moveable properties belonging to the said absconders in their

vide p.2 of D.M's file.

vide p.2 -do-

p.1 of -do-

p.3 -do-

respective villages.

On these facts, the question for consideration is whether under clause (a) of sub-rule (5B) of rule 26 of the D.of I.Rules the proceedings under section 88 of the Code of Cr.Pro.,1898, can legally be taken without first complying with the provisions of section 87.

2. Since the powers of the Provincial Govt. under rule 26 of the D.of I.Rules have been delegated to the D.Ms. under sub-rule (5B) of the D.of I.Rules, if the D.M. has reason to believe that a person in respect of whom he has made an order under clause (b) of sub-rule (1) directing that he be detained has absconded or is concealing himself so that such order cannot be executed, he may -

(a) make a report in writing of the fact to a Magistrate of the First Class having jurisdiction in the place where the said person ordinarily resides; and thereupon the provisions of sections 87,88 and 89 of the Code of Cr.Pro.,1898, shall apply in respect of the said person and his property as if the order directing that he be detained were a warrant issued by the Magistrate.

Section 87 of the Code of Cr.Pro.,1898, enacts that if any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it, has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than 30 days from the date of publishing such proclamation. This section provides in unequivocal terms that the issue of a warrant against the person whose attendance is required before the Court is a condition precedent to issue of a proclamation. What it contemplates is that a warrant should first be issued for the arrest of a person, and after that the Court should be satisfied that such person is absconding or concealing himself with a view to avoid service of the warrant of arrest, and on being so satisfied, the Court can publish a proclamation for his appearance by a specified time. It is evident that the condition precedent to the issue of a proclamation is that a warrant must have been previously issued against the person whose attendance before the Court is required, and if the Court has no authority to issue warrant, the order for issue of proclamation and subsequent

attachment of property would be illegal as one made without jurisdiction. Where the Magistrate had no jurisdiction to issue the warrant which preceded the proclamation and subsequent attachment, the proceedings would be illegal (14 B.L.R. 889). Since under sub-rule (5B) of rule 26 of the D.of I. Rules, the power to make an order of detention is conferred upon the Govt., and since Govt. has no jurisdiction to issue a warrant of arrest, special provision is made in clause (a) of sub-rule (5B) providing that the provisions of sections 87, 88 and 89 of the Cr.P.C. shall apply, "~~as if~~ the order directing that he be detained were a warrant issued by the Magistrate." In pursuance of the words underlined, the order of detention made under rule 26(1)(b) of the D.of I.Rules would be treated as if it were a warrant issued by the Magistrate under sec.87 of the Code of Cr.Pro. Clause (a) of sub-rule (5B) contemplates that no sooner a report is made in writing to the Magistrate of the First Class having jurisdiction in the place where the person ordinarily resides, of the fact that a person against whom detention order is issued has been absconding, the provisions of sections 87,88 and 89 of the Code of Cr.Pro. would automatically come into operation in respect of that person and his property. Since, however, the order of detention made under rule 26(1)(b) of the D.of I.Rules is treated as a warrant issued by the Magistrate under section 87 of the Code of Cr.Pro.,1898, no further warrant would appear to be necessary, and under section 87 the Magistrate to whom the report is made would have jurisdiction to issue a written proclamation requiring the person to appear before him within a specified time. Section 88 of the Code confers power to order attachment of property belonging to the proclaimed person "on the Court issuing a proclamation under section 87" and on no other Court. It is thus clear that a warrant under section 88 cannot be issued unless a proclamation has already been issued under section 87, and that is the reason why clause (a) of sub-rule (5B) of the D.of I.Rules brings into operation both the provisions of sections 87 and 88 of the Code of Cr.

Pro.,1898.

3. It is no doubt true that under clause (b) of sub-rule (5B) of rule 26 of the D.of I.Rules, the Govt. or when its powers are delegated, the D.M. may by notified order direct the absconding person to appear before such officer, at such place and within such period as may be specified in the order. In the present case the D.M. has also notified order under clause (b) of sub-rule (5B) of rule 26 of the D.of I.Rules. It appears that clauses (a) and (b) of sub-rule (5B) are independent of each other and provide for distinct remedies for enforcing appearance of absconding persons; if action is taken under clause (a) the provisions of sections 87 to 89 of the Code of Cr.Pro.,1898 would apply under which the property would be attached and sold; and if action is taken under clause (b) and if the person fails to comply with the order he will be punishable with imprisonment for a term which may extend to seven years or with fine or with both. If once action is taken under clause (a) of sub-rule (5B) of rule 26 of the D. of I.Rules, and a report is made to the Magistrate having jurisdiction, the provisions of sections 87,88 and 89 of the Code of Cr.Proc,,1898, would come into operation, and the procedure prescribed therein will have to be followed. An order notified by the D.M.,Kanara, under clause (b) of sub-rule (5B) of rule 26 of the D.of I.Rules for appearance of the absconding persons before the Sub-Divisional Magistrate, Karwar Town, cannot be construed to be a written proclamation under section 87 of the Code of Cr.Pro.,1898, for such a proclamation should have been published not by the D.M.Kanara, but by the Sub-Divisional Magistrate, Karwar Town, who issued the attachment order under sec 88 and to whom the report was made under clause (a) of sub-rule (5B) of rule 26 of the D.of I.Rules. With respect, the view At A of P.A's note does not appear to be correct.

C. Bhangara.
7/7
SKS

I agree with Mr. Bhangara. clauses (a) & (b) of rule 26 (5B) of the Defence of India Rules are independent provisions and a notified order issued under cl (b) cannot dispense with the proclamation to be issued under 87 Cr.P.C as provided in cl (a) though both could be simultaneously worded. RR 8/7 ACR

Civil Suit No. 111 of 1944.

In the Court of the First Class Subordinate Judge,

At Karwar.

1. Mukund Narayan Prabhu Sirurkar, age 51, G.S.B.
2. Rukmini kom Mukund Prabhu Sirurkar, age 43, G.S.B.
3. Gajanan Mukund Prabhu Sirurkar, age 19, G.S.B.
4. Narayan Mukund Prabhu Sirurkar, age 13, G.S.B., minor by his guardian and next friend Mukund Narayan Prabhu Sirurkar.
5. Nagesh Mukund Prabhu Sirurkar age 4 G.S.B. minor by his guardian and next friend Mukund Narayan Prabhu.

All these being the land-holders and residents of Siroor, Ankola, North Kanara ..... Plaintiffs.

versus

The Province of Bombay. .... Defendant.

Claim Rs. 2,000/-

The above named plaintiffs humbly submit as follows:-

(1) Plaintiff no. 1 is the husband of plaintiff no. 2 and plaintiffs nos. 3 to 5 are the sons of plaintiffs nos 1 and 2. These plaintiffs along with one more son of plaintiff nos. 1 and 2 namely Dayanand alias Ramchandra Mukund Prabhu, constitute a joint and undivided Hindu family with plaintiff no. 1 as its karta or manager.

(2) It is learnt that the District Magistrate of Kanara having come to know that an order dated 7th October 1942 purporting to be an order under Rule 26 of the Defence of India Rules for the arrest and detention of Dayanand alias Ramchandra Mukund Prabhu could not be executed and as it was represented to him that the said person has absconded with a view to avoid the execution of the said order made a report in writing of this fact to the Sub Divisional Magistrate, First Class, Karwar Town, on 26th October 1942 and at the same time requested him to take action against the said person and his property under the provisions of section 87 and section 88 of Criminal Procedure Code as required by the amended Sub rule 5(B) of Rule 26 of the Defence of India Rules. The District Magistrate of Kanara appears to have issued a notification on the same date

at his camp at Mundgod which is published later, against the said Dayanand alias Ramchandra Mukund Prabhu along with 13 other persons under clause (4) of sub rule 5(B) of the said Rule 26.

(3) On receiving this report and request of the District Magistrate, Kanara, the Sub-Divisional Magistrate First Class, Karwar Town issued a warrant to the Sub Inspector of Police at Ankola and thereby directed him to to attach by seizure the moveable property belonging to each of the 14 persons whose names were embodied in the said warrant, in their respective villages, and to hold the same under attachment pending further orders from the court.

(4) Purporting to execute this order of attachment, the Police Sub Inspector of Ankola has quite unauthorisedly and unwarrantedly, proceeded to attach on 8th February 1943 and 9th February 1943 moveable properties from the house at Siroor and the shop at Ankola respectively. Out of the moveable properties that were so attached and seized those that were attached from the shop at Ankola belonged to plaintiff no. 1 and were not in any sense be said to be belonging to the alleged absconder Dayanand alias Ramchandra Mukund Prabhu and could not therefore be attached either under the legal provision or even under the terms of the order of attachment mentioned above.

(5) Moreover, the attachment and seizure of these moveables is wanton and illegal. There was altogether no list or schedule of the intended moveables to be attached as contemplated by the form of warrant embodied in schedule V of the Criminal Procedure Code for attachment of moveables under section 88, Criminal Procedure Code. Besides this, the order of attachment having authorised and required the police Sub Inspector of Ankola to attach by seizure the moveable properties belonging to each of the fourteen persons in their respective villages, the Police Sub Inspector of Ankola in proceeding to attach the moveables from the shop at Ankola which belonged to the plaintiff no. 1 who was managing and conducting his business at Ankola, has gone beyond

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the scope of the terms of the order of attachment and has in fact, unauthorisedly and illegally attached these moveables that were not comprised in the aw warrant of attachment itself. The Police Sub Inspector of Ankola who had no authority except that conferred upon him by the directions embodied in the said warrant, had no right to do this and has thus, traversed illegally, much beyond the scope of the authority so conferred without any justification. Besides this, the interest of these plaintiffs in these moveables which cover the whole property was not at all liable to attachment wkk either under that section or under the warrant purporting to have been issued under that section. Further the family of these plaintiffs has not at all been a trading family from the time of their forefathers nor did they inherit any ancestral trading business as such. The moveables that were attached and seized from the shop at Ankola clearly belong to the running business that was started and is being conducted by plaintiff no. 1 independently in his own time, Under the circumstances, the various moveable properties that were attached from his shop could not be said to be belonging to the alleged absconder Dayanand alias Ramchandra Mukund Prabhu, and he had no attachable interest in these moveables so as to make them liable to attachment and seizure.

(6) In the alternative and without prejudice, even if the moveable properties that were attached and seized from a part of the joint family property of the family of these plaintiffs and Dayanand alias Ramchandra Mukund Prabhu, even then, these moveables could never be legally liable to attachment by seizure as if they were exclusively of the said Dayanand alias Ramchandra Mukund Prabhu.

(7) Besides, there are other serious objections to the various orders issued by the District Magistrate, Kanara, and also the order of attachment itself which are sufficient to render the whole procedure adopted illegal and void in law as the District Magistrate had no jurisdiction at all in issuing the notificatic etc and hence the consequent steps taken thereunder were illegal

and ultra vires.

(8) As a result of all this, these plaintiffs having ~~been~~ been put to substantial loss, claim to recover from the defendant a sum of Rs. 2073/- as the total amount of damages by way of compensation for this illegal and wrongful attachment of the various items of moveables properties. They gave a notice dated 4th February 1944 to the defendant as required under the provisions of section 80 of the Civil Procedure Code. But the defendant, though duly served with the said notice, has taken no steps to comply with their claim. They are therefore constrained to bring this suit to recover from the defendant a sum of Rs. 2000/- only they having given up their claim for the balance of Rs. 73/- by way of compensation for the said illegal and wrongful attachment of the various items of moveable properties, with interest thereon at 6 per cent per annum from the date of suit till date of recovery and costs as per said notice except for a sum of Rs. 73/- which now been given up and a copy of the said notice has been produced with this plaint with the acknowledgmentof receipt of service of the said notice by the defendant and also a list of the various items of moveable properties attached as alleged above which the plaintiffs contend to have been wrongfully attached is also produced with the plaint.

(9) The cause of action for this suit arose on 8th February 1943 and 9th February 1943, the days on which the several items of the moveable properties were in fact, wrongfully and illegally attached and seized, it having arisen within the limits of the jurisdiction of this court, this court has jurisdiction to try this suit.

(10) The valuation of the suit for the purposes of court fees and pleader's fees is Rs. 2000/- being the amount of damages claimed in this suit,

(11) The plaintiffs being obliged to give and having in fact given to the defendant two months' ~~time~~ notice before suit under the provisions of section 80 of the Civil Procedure Code are entitled to deduct this period of two months from the

ordinary period of limitation under the provisions of section 15(2) of the Indian Limitation Act. Besides, the court being closed on 8th and 9th April 1944 on account of a holiday and Sunday this suit which is filed today is in time.

(12) The plaintiffs, therefore, pray that this court may be pleased to award to them from the defendant a sum of Rs. 2000/- as damages by way of compensation for illegal and wrongful attachment and seizure of the various items of moveable properties from their house at Siroor and shop at Ankola with interest thereon at 6 per cent per annum from the date of suit till the date of payment and costs and such other relief or reliefs to which they may be found entitled.

Sd.

We, the above named plaintiffs, do hereby declare that the contents of this plaint are true to the best of our knowledge and information. Signed this 10th day of April 1944 at

Sd.

----oOo ----

This relatesto Kanara Civil Suit No.111 of 1944. The plaintiffs sue for damages for wrongful attachment. They are the parents and brothers of one Dayanand who formed a joint Hindu family with them. An order of detention has been made against Dayanand under rule 26(1)(b) of the Defence of India Rules. He was reported to be absconding. The District Magistrate made a report to the Sub-Divisional Magistrate under rule 26(5B)(a). The latter Magistrate made an order of attachment under section 88 of the Criminal Procedure Code without first issuing a proclamation under section 87 as required by law. That was an irregularity. Plaintiffs allege irregularities also in the execution of the warrant of attachment, as for instance that the moveable property seized in attachment being joint family property was not liable to seizure. In fact on the plaintiffs' application on the latter ground under section 88(6A) the Magistrate raised/~~revised~~ the attachment.

* vide RLA's opinion at page 13 of these papers.

2. The suit is defensible on the legal ground that it discloses no cause of action against the Govt: vide paras.2 to 4 of grounds of defence.

3. Sanction may be accorded to the defence of the suit on the lines of the appended brief. A draft written statement is put up for approval.

2/1

ALR 2/1/45

Revn 3/1/45

* No.98 dt.4-1-45

K Secy HD

6/17

IN THE COURT OF THE FIRST CLASS SUBORDINATE JUDGE, AT KARWAR.

CIVIL SUIT NO. 111 of 1944.

1. Mukund Narayan Prabhu Sirurkar,
2. Rukmini kom Mukund Prabhu Sirurkar,
3. Gajanan Mukund Prabhu Sirurkar,
4. Narayan Mukund Prabhu Sirurkar,
5. Nagesh Mukund Prabhu Sirurkar.....) Plaintiffs;

v/s

The Province of Bombay .....Defendant.

Written statement of the defendant abovenamed is as follows:-

1. The plaintiffs' claim is not true and is denied in toto.

2. With reference to the contents of paragraph 2 of the plaint the true facts are as follows: On the 7th October 1942 the District Magistrate, Kanara issued an order under rule 26 of the Defence of India Rules for the arrest and detention of Dayanand alias Ramchandra Mukund Prabhu of Shirur, Taluka Ankola and certain other persons. It having been reported that all the said persons including Dayanand were absconding with a view to avoid the execution of the order, the District Magistrate on 26th October 1942 issued an order under rule 26(5)-B(b) of the Defence of India Rules requiring all the said absconding persons to appear before the Sub-Divisional Magistrate, Karwar Town, at Karwar within one month of the date of this order. The same day the District Magistrate made a report to the said Sub-Divisional Magistrate in accordance with rule 26(5)-B(a) and also forwarded to the latter a copy of his aforesaid order under rule 26(5)-B(b).

3. With regard to paragraph 3 of the plaint the defendant states that the said Sub-Divisional Magistrate on 26th November 1942 finding that none of the persons in respect of whom the District Magistrate had made the order under rule 26(5)-B(b) had appeared before him as directed, issued an order that the moveable properties belonging to the said

71 74

*Suits :*

Kanara.

For damages for wrongful attachment.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 236.

Bombay Castle, 9th January 1945.

Letter from the Collector of Kanara, No. 7342, dated the 5th September 1944—Forwarding papers in the suit noted in the margin; and requesting sanction to its defence.

IN THE COURT OF THE FIRST CLASS SUB-JUDGE, KARWAR.
Civil Suit No. 111 of 1944.

Mukund Narayan Prabhu Sirurkar and 4 others .. Plaintiffs;
*versus*
The Province of Bombay .. .. Defendant.
Claim—Rs. 2,000.

Endorsement by the Commissioner, Southern Division, No. L.S.T. 320, dated the 15th September 1944—Forwarding the above with his concurrence.

Memorandum from the Home Department No. S. 71/13411B, dated the 2nd October 1944—Forwarding the above with a request that necessary steps may be taken to defend the suit.

Memorandum to the District Government Pleader, Karwar, No. 235, dated the 9th January 1945—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay.

original

P. N. MOOS,
Secretary to Government.

G. R., No. 236, L. D., dated the 9th January 1945.

To

Issued
28/1

* The Home Department,
* The Commissioner, Southern Division,
* The Collector of Kanara.
The District Government Pleader, Kanara (with two copies of the brief).

*With a copy of the brief.

No. of 1945.

Copy forwarded for information and guidance to

Submitted after issue.
File in a new suit file.

1-3-45 P.A.

new file ✓
S Kan 1/45
2/3/45

2373

KANARA CIVIL SUIT No. 111 OF 1944.

*Chronological Statement of Facts.*

Plaintiffs sue to recover Rs. 2,000 as damages for wrongful attachment with interest at 6 per cent. per annum from date of suit.

p. 2 of file. On 7th October 1942, the District Magistrate, Kanara, issued an order under rule 26 (1) (*b*) of the Defence of India Rules for the arrest and detention of Dayanand *alias* Ramchandra Mukund Prabhu and others. As the persons were reported to be absconding with a view to avoid the execution of the Order, the District Magistrate on 26th October 1942, reported the matter to the Sub-Divisional Magistrate, I Class, Karwar Town, as required by rule 26 (5B) (*a*). The same day the District Magistrate acting under

p. 1 do. rule 26 (5B) (*b*) issued an Order requiring the said Dayanand and other absconding persons to appear before the said Sub-Divisional Magistrate within one month of the date of the Order.

p. 3 do. On 26th November 1942, the Sub-Divisional Magistrate, Karwar Town, issued an Order under section 88 of the Criminal Procedure Code, authorising the Sub-Inspector of Police, Ankola, to attach the movable properties belonging to the said Dayanand of Shirur and other persons in their respective villages.

p. 5 do. On 25th January 1943, the District Magistrate transferred the proceedings to the Court of the Magistrate, I Class, Ankola.

pp. 9 to 30 do. Movable property as belonging to Dayanand was attached by the Sub-Inspector of Police on 8th February 1943, in a house at Shirur and on 9th February 1943 in a shop at Ankola.

p. 37 do. On 15th March 1943, plaintiffs Nos. 1 and 2 being the father and mother respectively of Dayanand along with plaintiffs Nos. 3 to 5 being his brothers jointly made a claim petition objecting to the attachment under section 88 (*6A*) of the Criminal Procedure Code.

p. 49 do. On 12th June 1943, the petitioners applied that pending decision of their said petition the attached property may be delivered into their possession on taking adequate security. The petitioners were ordered to deposit the *panchnama* value of the property and on their so doing the property was handed into their possession.

p. 40 (*a*) do. On 1st February 1944, the Magistrate allowed the claim petition, raised the attachment and ordered the deposit amount to be refunded.

On 4th February 1944, plaintiffs gave notice of suit under section 80, Civil Procedure Code. This suit was filed on 10th April 1944.

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*Grounds of Defence.*

This is an action for damages for wrongful attachment. The irregularities, either real or alleged, are as follows :—

(1) The Sub-Divisional Magistrate issued an order under section 88 of the Criminal Procedure Code without first issuing a proclamation under section 87.

(2) The warrant of attachment did not contain a list of the movables to be attached.

(3) The warrant authorised attachment at Shiroor only but it was executed by the Sub-Inspector of Police at Ankola also.

(4) The shop at Ankola belonged to plaintiff No. 1 exclusively and the absconding Dayanand had no share or interest in it.

(5) Seizure of joint family property was illegal.

2. *Cause of action.*—Assuming that the issue and execution of the warrant were illegal, it is yet clear that the plaint discloses no cause of action against the Government. In

the first place it should be contended that the Magistrate acted in exercise of his statutory power and not in obedience to an order of the executive Government and that the police officer acted in good faith in execution of the warrant. Secondly, the State could not be held liable for the improper conduct of public servants unless those acts had been subsequently adopted and ratified by it and unless it derived any benefit from those acts; Iyer, Law of Torts, 3rd edition, pp. 506 to 510; Shivabhajan *v.* Secretary of State 28 Bom. 314 (a case of seizure and negligence by constable); Sewal Ram Agarwalla *v.* Abdul Majid (1938) 1 Cal. 581 (also a case of damages for wrongful seizure and detention); Maharani of Nabha *v.* Province of Madras 1944 F.L.J. 115 (a case of false imprisonment). The second of the above propositions is clear enough from the authorities cited but the first one might require a little explanation here. Rule 26 (5B) (*a*) of the Defence of India Rules provides that when an order directing the detention of a person under rule 26 (1) (*b*) has been made and the person is absconding, the Government or the District Magistrate to whom the power has been delegated may

(*a*) make a report .....to a Magistrate; and thereupon the provisions of sections 87, 88 and 89 of the Code of Criminal Procedure shall apply in respect of the said person and his property as if the order directing that he be detained were a warrant issued by the Magistrate.

It is thus clear from the language of the rule that after the Magistrate has received the report, the provisions of section 88 apply by statute. The omission first to issue a proclamation under section 87 would make an order under section 88 erroneous, but nevertheless the competency of the Court to make the latter order cannot be disputed; *See* Fisher *v.* Pearse 9 Bom. 1 at page 7. Therefore the Sub-Divisional Magistrate in this case issued the warrant under section 88 not in obedience to an order of the executive Government but in performance of a statutory power vested in him by the said rule 26 (5B) (*a*); (28 Bom. 314 cited above). The Sub-Inspector of Police was merely executing the warrant as required by law, and though he might have exceeded the authority given him by the warrant, it cannot be suggested for a moment that Government had anything to to do with it. The first proposition also is thus as well established as the second.

3. The suit would also be barred under section 17(*2*) of the Defence of India Act which provides that no suit or other legal proceeding shall lie against the Crown for any damage caused by anything in good faith done or intended to be done in pursuance of the Act or any rules made thereunder. It should be observed that there is no statement in the plaint which challenges the good faith of the Government.

4. The Magistrate and the police officer have not been joined as defendants to the suit; but it is clear that they too are amply protected in law: *See* (1) section 17(*1*) of the Defence of India Act; (2) The Judicial Officers' Protection Act (XVIII of 1850); and (3) section 270 of the Government of India Act. The Judicial Officers' Protection Act clearly states that 'No Magistrate acting judicially shall be liable to be sued in any civil court for any act done or ordered to be done by him in the discharge of his judicial duty, *whether or not within the limits of his jurisdiction*; provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of.' Good faith is not challenged by the plaintiffs, and the belief about jurisdiction is clear enough from the order itself issued by the Magistrate under section 88. Lastly, though the Act protects even an order without jurisdiction, the order in the present case was within the limits of the Magistrate's jurisdiction as described in rule 26 (5B) (*a*). The order was only made erroneously: Fisher *v.* Pearse 9 Bom. 1 referred to already. There was nothing on the face of the warrant to show that it was defective and the police officer was bound to execute it according to its terms; so to that extent the latter half of section 1 of the Act would protect the Sub-Inspector of Police also. As to the application of section 270 of the Government of India Act, see the rulings at 1938 (1) Cal. 581 and 1944

25 75

F. L. J. 119 cited before. If the Sub-Inspector of Police believed that he was acting within his authority, then however mistaken his belief, he should be protected. The liability of the Government, if any, is that of a master for his servants, and if the servants are protected by law, Government also should be held immune from liability. Thus also there is no cause of action against Government.

5. *Merits.*—The irregularities noticed in paragraph 1 above may now be considered. It is only "the Court-issuing a proclamation under section 87" that can make an order under section 88. Therefore the action of the Magistrate in issuing an order under section 88 without first issuing a proclamation under section 87 was untenable in law, (see 14 Bom.L.R. 163); and the fact that the contents of the District Magistrate's notification under rule 26 (5B) (*b*) directing the absconder to appear before the Magistrate were similar to those of a proclamation under section 87 would not purge the illegality.

6. As to the second irregularity plaintiffs contend that the form of warrant given in schedule V of the Criminal Procedure Code requires the warrant to contain a list or schedule of the property to be attached. It will be found, however, that out of the two forms contained in Form No. VI of Schedule V for compelling the appearance of a person, only the second provides for description of the property to be attached. The first one requires nothing more than that the attached property shall belong to the absconder, shall not exceed in value a certain sum of rupees and shall be found within the area of a certain district. It is true that in this case the Magistrate purported to use the second form, but nevertheless the contents of the first form are enough to show that the list of the movables to be attached cannot be so indispensable a part of the warrant that its validity would depend upon it. Moreover the true effect of the forms set out in Schedule V is to be determined under section 555 of the code which provides that "the forms set forth in the fifth Schedule, *with such variation as the circumstances of each case require*, may be used for the respective purposes therein mentioned and if used shall be sufficient". The words italicized clearly leave a discretion to the Magistrate, and therefore the warrant issued in the present case should be deemed to have been sufficient.

7. The next irregularity alleged is that there was no authority to execute the warrant at Ankola. This is only an inference drawn by reading together two different portions of the warrant. The first portion is in paragraph 1 in which the absconding person is described as "of Shiroor Taluka Ankola". The second portion is in paragraph 2 where the

Sub-Inspector of Police is authorised to attach movables belongings to the several absconding persons in "their respective villages". According to the plaintiffs "respective villages" must be limited in Dayanand's case to Shiroor only. This interpretation gives an importance to words of description which may not have been intended. Section 88 (2) provides that the order of attachment "shall authorise the attachment of any property belonging to such person within the district in which it is made". Similarly the order of attachment itself in the concluding portion of the first paragraph of the warrant merely states that "the movable properties belonging to these persons are attached under section 88 of the Criminal Procedure Code". These two circumstances do not evidence any intention to limit the attachment to Shiroor only. If Dayanand had property in any other village in the same district, attachment of that property also should be deemed to be valid.

8. As regards the plaintiff No. 1's claim to exclusive ownership of the Ankola shop, it is admitted that the family is a joint Hindu family and the presumption is that the shop is joint family property. The plaintiffs only state that it was not ancestral business; but that is immaterial. There is no allegation showing that the property was the separate property of plaintiff No. 1 acquired without the aid of joint family property. The plaintiff No. 1's claim is hence not sustainable.

9. As to the last irregularity alleged, though Dayanand had an interest in the joint family property, it must be admitted that attachment by seizure of movables belonging to the joint family was an erroneous method of attachment. But the attachment could have been effected in other ways, as for instance by appointing a receiver, and the wrong procedure employed does not give a cause of action to the plaintiffs as explained earlier.

10. *Damages.*—Damage is the gist of the action, but the plaint does not state in what way plaintiffs have suffered loss by the temporary deprivation of the attached movables. It should, however, be contended that plaintiffs are not entitled to any but nominal damages.

83 27

Received on 10-4-1944.
Registered on 14-6-1944.
Decided on 31-10-1945.
Duration 1 year, 6 months and 21 days.

Exhibit No. 44.

In the Court of the Civil Judge, ( Senior Division)

At Karwar.

Civil Suit No. 111 of 1944.

Pleaders. 1. Mukund Narayan Prabhu, Sirurkar, age 51, Goud Saraswat Brahmin.

r. Haldipurkar and r. G.P.Pai. 2. Rukmini kom Mukund Prabhu Sirurkar, age 43, Gowd Saraswat Brahmin.

3. Gajanan Mukund Prabhu Sirurkar, age 19, G.S.B.,

4. Narayan Mukund Prabhu Sirurkar, age 13, Goud Saraswat Brahmin, minor by his guardian and next friend Mukund Narayan Prabhu Sirurkar.

5. Nagesh Mukund Prabhu Sirurkar, age 11 G.S.B., minor by his guardian and next friend Mukund Narayan Prabhu, Sirurkar,

all landholders and residents of Siroor, Ankola, North Kanara. .. Plaintiffs.

against

R.B.Chandavarkar. The Province of Bombay. ... Defendant.

Claim Rs. 2,000/-

The Plaintiffs sut to award to them from the Defendant a sum of Rs. 2,000/- as damages by way of compensation for illegal and wrongful attachment and seizure of the various items of moveable from their house at Siroor and shop at Ankola with interest thereon at 6/- per cent per annum from the date of suit till the date of payment and costs and such other reliefs to which they may be found entitled alleging as follows:-

2. Plaintiff No. 1 is the husband of Plaintif No. 2 and Plaintiffs Nos. 3 to 5 are the sons of Plaintiffs nos. 1 and 2. These Plaintiffs along with one more son of Plaintiffs Nos. 1 *and no. 2 nemely Dayanand alias Ramchandra Mukund Prabhu, constitute a joint and undivided Hindu family with Plaintiff No.1 as its Karta or manager. It is learnt that the District Magistrate of Kanara having come to know that an order dated 7th October 1942 purporting to be an order under rule 26 of the Defence of India Rules for the arrest and detention of Dayanand alias Ramchandra Mukund Prabhu could not be executed and as it was represented to him that the said person had absconded with a view to avoid the execution of the said order made a report in writing of this fact to the Sub Divisional Magistrate,

*O.P.2.

First Class, Karwar Town, on 26th October 1942 and at the same time requested him to take action against the said person and his property under the provisions of sections 87 and 88 of Criminal Procedure Code as required by the amended sub-rule 5(B) of ~~rule~~ rule 26 of the Defence of India Rules. The District Magistrate of Kanara appears to have issued a notification on the same date at his camp at Mundgod which is published later, against the said Dayanand alias Ramchandra Mukund Prabhu along with 13 other persons under clause (b) of sub rule 5(B) of the said rule 26.

3. On receiving this report and request of the District Magistrate, Kanara, the Sub Divisional Magistrate, First Class, Karwar Town, issued a warrant to the Sub Inspector of Police at Ankola and thereby directed him to attach by seizure the moveable property belonging to each of the 14 persons whose names were embodied in the said warrant, in their respective villages, and to hold the same under attachment pending furthm orders from the Court.

4. Purporting to execute this order of attachment, the Police Sub Inspector of Ankola has quite unauthorisedly and unwarrantedly, proceeded to attach on 8th February 1943 and 9th February 1943 moveable properties from the house at Siroor and the shop at Ankola respectively. Out of the moveable properties that were attached from the shop at Ankola belonged to Plaintiff No.1 and were not in any sense be said to be belonging to the alleged absconder Dayanand alias Ramchandra Mukund Prabhu either under the legal provision, or even under the terms of the order of attachment mentioned above. *O.E

4. Moreover, the attachment and seizure of those moveables is wanton and illegal. There was altogether no list ofschedule of the intended moveables to be attached as contemplated by the form of warrant embodied in schedule V of the Criminal Procedure Code for attachment of moveables under section 88, Criminal Procedure Code. Besides this, the order of attachment having authorised and required the Police Sub Inspector of Ankola to attach by seizure the moveable properties belonging to each of the fourteen persons in their respective villages, the Police Sub Inspector of Ankola in proceeding to attach the moveables from the shop at Ankola which

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belonged to the Plaintiff No.1 who was managing and conducting his business at Ankola, has gone beyond the scope of the terms of the order of attachment and has in fact, unauthorisedly and illegally attached these moveables that were not comprised in the arrant of attachment itself. The Police Sub Inspector of Ankola who had no authority except that conferred upon him by the directions embodied in the said warrant, had no right to do this and has thus traversed illegally, much beyond the scope of the authority so conferred without any justification. Besides this, the interest of these Plaintiffs in these moveables which cover the whole property was not at all liable to attachment either under that section or under the warrant purporting to have been issued under that section. Further the family of these Plaintiffs has not at all been a trading family from the time of their forefathers nor did they inherit any ancestral trading business as such. The moveables that were attached and seized from the shop at Ankola clearly belong to the running business that was started and is being conducted by Plaintiff No. 1 independently in his own time.*Under the circumstances, the various moveable properties that were attached from his shop could not be said to be belonging to the alleged absconder Dayanand alias Ramchandra Mukund Prabhu, and he had no attachable interest in these moveables so as to make them liable to attachment and seizure.

*O.P.4.

5, In the alternative and without prejudice, even if the moveable properties that were attached and seized form a part of the joint family property of the family of these Plaintiffs and Dayanand alias Ramchandra Mukund Prabhu, even then, these moveables could never be legally liable to attachment or seizure as if they were exclusively of the said Dayanand alias Ramchandra Mukund Prabhu.

6. Besides, there are other serious objections to the various orders issued by the District Magistrate, Kanara, and also the order of attachment itself which are sufficient to render the whole procedure adopted illegal and void in law as the District Magistrate had no jurisdiction at all in issuing the notification

etc., and hence the consequent steps taken thereunder were illegal and ultra vires.

7. As a result of all this, these Plaintiffs having been put to substantial loss, claim to recover from the Defendant a sum of Rs. 2,073/- as the total amount of damages by way of compensation for this illegal and wrongful attachment of the various items of moveable properties. They gave a notice dated 4th February 1944 to the Defendant as required under the provisions of section 80 of the Civil Procedure Code. But the Defendants though duly served with the said notice, has taken no steps to comply with their claim. Hence the suit.

8. The cause of action for this suit arose on 8th February 1943 and 9th February 1943, the days on which the several items of the moveable properties were in fact wrongfully and illegally attached and seized.

9. The Defendant by his written statement exhibit no. 13 contends as follows:-

10. The Plaintiffs' claim is not true and is denied in toto.

11. With reference to the contents of paragraph 2 of the plaint the true facts are as follows: On the 7th October 1942 the District Magistrate, Kanara, issued an order under rule 26 of the Defence of India Rules for the arrest and detention of Davanand alias Ramchadra Mukund Prabhu of Shirur, Taluka Ankola and certain other persons. It having been reported that all the said persons including Dayanand were absconding with a view to avoid the execution of the order, the District Magistrate on 26th October 1942 issued an order under rule 26(5)-B(b) of the Defence of India Rules requiring all the said persons absconding to appear before the Sub Divisional Magistrate, Karwar Town, at Karwar within one month of the date of this order. The same day the District Magistrate made a report to the said Sub Divisional Magistrate in accordance with rule 26(5)-B(a) and also forwarded to the latter a copy of his aforesaid order under rule 26(5)-B(b).

12. With regard to paragraph 3 of the plaint the Defendant states that the said Sub Divisional Magistrate on 26th November 1942 finding that none of the person in respect of whom the District Magistrate had made the order under rule 26(5)-B(b) had appeared before him as directed, issued an order that the moveable properties belonging

87 51

to the said persons be attached under section 80 of the Criminal Procedure Code and authorised the Sub Inspector of Police, Ankola to attach the moveable properties belonging to each of the said persons in their respective villages by seizure, and to hold the same under attachment pending further orders of the Court.

13. The allegations and contentions in paragraphs 4 to 6 ( both inclusive) of the plaint are denied. It is denied that the attachment effected either at Sirsi or at Ankola was without *authority or warrant as alleged. The attachment at both places was made lawfully and in good faith. It is denied that Plaintiff no, 1 was exclusive owner of the shop at Ankola as alleged or that Dayanand had no interest in the shop. It is also denied that the attachment at Ankola was not under any legal provision or was against the terms or beyond the scope of the order of attachment. Plaintiffs are put to strict proof of these several allegations and contentions.

*o.p.6

14. The allegations in paragraph 7 of the plaint are not true and are denied. The District Magistrate's orders and notifications and the entire proceedings were legal and intra vires.

15. Defendant denies that Plaintiffs have suffered loss on account of the attachment. Plaintiffs applied on 12th June 1943 that the attached goods may be delivered into their possession pending decision of their claim petition on furnishing adequate security, and the application was allowed on 15th June 1943 on condition that they deposited the panchanama value of the goods in court.

16. Defendant denies that Plaintiffs are entitled to Rs.2000/- or any other amount as damages. Neither the notice nor the plaint contains any details of the alleged damages. The notice and the plaint are hence both defective and the suit is not tenable.

17. The Defendant states that all orders and proceedings in this case were lawful and that Plaintiffs' contention to the contrary are not true and are denied.

18. The plaint discloses no cause of action against Government The warrant of attachment was issued and executed by the

Magistrate

Magistrate and the Sub Inspector of Police respectively by virtue of their statutory power and not by executive order of Government. Government is also not liable for the improper conduct, if any, o.p.7 of public officers. The action of the public officers themselves is protected by law in section 17(1) of the Defence of India Act, the Judicial Officer's Protection Act and section 270 of the Government of India Act. Thus also is Government not liable.

19. The suit is barred under section 17(2) of the Defence of India Act.

20. Plaintiffs are notentitled to any relief and the suit should be dismissed with costs.

21. The issues for decision are:-

1. Whether it is proved that the attachment of moveable property complained of effected at Shirur and Ankola was without authority as alleged?
2. Whether the attachment was not made lawfully and in good faith?
3. Whether it is proved that the attachment was made beyond the terms of any legal provision?
4. Whether Defendant is liable for the improper conduct, if any, of public officers?
5. Whether the plaint discloses any cause of action against the Defendant?
6. Whether the act of the several Government officers concerned is protected under section 17(1) of the Defence of India Act, Judicial Officers' Protection Act and section 270 of the Government of India Act.
7. Whether the suit against the Defendant is barred under section 17 clause (2) of the Defece of India Act?
8. What damages have plaintiffs sustained?
9. Whether Defendant is liable to pay any and what damages?
10. What order?

No further issue is sought.

22. My findings are:-

1. Yes. 2. The attachment was not made lawfully. 3. Not necessary. 4. Not necessary. 5. ~~Not necessary~~ Yes. 6. No. 7. No. 8 to 10. As ordered.

89 33

Reasons.

23. This is a suit against the Province of Bombay, in other words the Government of Bombay for damages to the extent of
*o.p.8. *Rs. 2,000/- by way of compensation for illegal and wrongful attachment and seizure of the various items of moveable property from the Plaintiffs' house at Sirsor and shop at Anmola with interest thereon at 6/- per cent per annum from the date of suit. The pleadings have been fully set out and I do not think it necessary to xxx repeat them. However, it will be necessary to refer to certain facts which are not disputed whenever necessary. The only oral evidence is that of the Plaintiffno.1, and the Defendant has led no evidence.

24. The main points argued in this case are of law; and the foremost is that the attachment of Plaintiffs' moveables under rule 26(b-B)(b) of the Defence of India Rules was illegal and ultra vires as there was no delegation of that rule to the District Magistrate after it was amended. The rule as it now stands was amended on August 15, 1942 so as to include a provision for an order being issued against a person whose detention had already been ordered to present himself before some Government authority on penalty of seven years' rigorous imprisonment for breach of that order. The powers of the Government of Bombay under rule 26, were delegated to all District Magistrates by the Government of Bombay on December 19, 1941 and by virtue of that order of delegation the District Magistrate coul pass an order as laid down. But in this case Dayanand alias Ramchandra who is one of the members of the joint family of the Plaintiff absconded and the order to take steps against him as required by rule 26(5)B(b) as it now stands was passed by the District Magistrate, Kanara, on 26th October 1942. The order xx runs: " I have the honour to state that an order under rule 26 of the Defence of India Rules dated 7th October 1942, for the arrest and detention of the persons mentioned in the accompanying order under rule 26(5)B(b) of the Defence of India Rules, is still pending execution though efforts have been made to

have the order executed. It is reported that the said persons have absconded with a view to avoid the execution of the said order. You are therefore requested to take action against the said person and their property under sections 87 and 88 of the Criminal Procedure Code, 1898, as required by amended sub rule 5B of the Defence of India Rules". It is clear that the order was passed by the District Magistrate under the authority of the previous delegation. There was no fresh delegation of the amended rule when the District Magistrate passed his order, and it cannot be held that the previous delegation automatically covered all new powers which may be granted in future to the Provincial Government under rule 26. The delegation must be referred to section 2(5) of the Defence of India Act. The delegation, it is clear, can apply only to such powers as were then in existence. It cannot extend to all independent as distirguished from merely incidental powers which may subsequently be confirmed on the delegating authority. It is evident that one cannot delegate a power which one does not possess. The rule with which we are now concerned reads thus:- 5B)(a) and (b) If the Central Government or the Provincial Government as the case may be, has reason to believe that a person in respect of whom that Government has made an order under clause (b) of sub rule (1) directing that he be detained has absconded or is concealing himself so that such order can be executed, that Government may -

25. Clause 5B(a) of rule 26 authorises the Government " to make reports in writing of the fact to a Presidency Magistrate or a Magistrate of the First Class having jurisidiction in the place where the said person ordinarily resides, and thereupon the provisions of sections 87, 88 and 89 of the Code of Criminal Procedure, 1898, shall apply in respect of the said person and his property as if the order directing that he be detained were a warrant issued by the Magistrate".

26. By notified order direct the said person to appear before such officer, at such place and within such period as may be specified as in the order; and if the said person *fails to comply

*c.p.m

with

With such directions he shall, unless he proves that it was not possible for him to comply therewith and that he had within the period specified in the order informed the officer of the reason which rendered compliance therewith impossible and of his whereabouts be punishable with imprisonment for a term which may extend to seven years or with fine or with both'. The clause with which we are concerned by Government Notification No. 1020- OR 41, dated the 15th August 1942 while the delegation as I have said already came into force on July 17, 1943. In such a case the order of attachment under the rule concerned is clearly illegal and ultra vires. I am fortified in this opinion by the decision in Emperor versus Rayan Gowda Lingangowda Patil, 46 Bombay L.R. page 495 wherein it has been held " The delegation of its powers by a Provincial Government under a rule of the Defence of India rules, 1939 to District Magistrate within the province, under section 2(5) of the Defence of India Act 1939, is valid only to the extent of the rule as it stands at the date of the delegation It does not operate to cover amendments made in the rule subsequent to such date. A fresh delegation is necessary to bring the amendments into effect for the exercise of power under the amendment.

27. The delegation of powers under the rules cannot therefore be deemed to cover the delegation of such powers as might thereafter be brought into existence for the first time by re-enactment of the rules".

28. From this ruling of our own High Court the delegation of the powers under the amended rule 26(5)B(b) was made only, as I have already said, after the date of the District Magistrate's order and report exhibit ZZ dated 26th October 1942. It is clear therefore that the order of the District Magistrate was passed without jurisdiction and that it cannot be held that it could have been enforced. That being so all that took place persuant to that order would be evidently illegal and invalid. If that is
wo.p.11. so the attachment complained of by * the Plaintiffs naturally has to be held to have been made without any jurisdiction and authority. This would suffice to dispose of the case but some

other points are urged before me which I should think it proper to consider.

29. It is urged that Rule 26 confers on the District Magistrate the powers under sections 87, 88 and 89 of the Code of Criminal Procedure, 1898; and as I have already referred to the pertinent clause, Section 87 of the Code of Criminal Procedure lays down: "(1) If any Court has reason to believe ( whether after taking defence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such a proclamation". The other clause of section lays down as to how the proclamation should be published. Section 88 states the procedure regarding the attachment of the property of a person absconding who has been asked to present himself before a Court of Law. Here it is conceded that no proclamation was issued and from this circumstance it is argued that the attachment subsequently issued and made was illegal. I am referred in this connection and as to the non-liability or otherwise of the Government in the absence of the officers concerned to the decisions in the following cases:-

1. The Secretary of State for India Vs. Jagat Mihini Dasi, 28 Calcutta 540.

2. Kailash Chandra Nag Vs. Secretary of State for India, 40 Calcutta, 452.

3. Shivabhajan Durgaprasas Vs. The Secretary of State for India, 28 Bombay, 714-325.

4. Wasappa bin Timmappa Songar Vs. The Secretary of State for India, 40 Bombay, 200.

5. The Secretary of State for India Vs. Ahalyabai Bhartar Narayan Kulkarni, 1938 Bombay, 454.

*Taking up the first point, in the first case, the Magistrate in *o.p2 the discharge of his judicial duty and in good faith issued attachment of the property as belonging to the Secretary of State for India. It was held that the attachment of the property under section 88 of the Code of Criminal Procedure was an act of the Magistrate in the discharge of his judicial duty and no want of good faith being imputed either to the Magistrate or to the Police officer who acted

93 39

under his orders both the Magistrate and the Police officer were protected under Act 8 of 1850 meant for the protection of the Judicial officers. The attachment was in a Criminal case in which the accused was absconding and the property was attached as belonging to him at the instance of one of the complainants. The attachment made by the police officers under the orders of the Magistrate was under statutory provision and the facts in that case were different to those in this case. Section 87 says that the Court may publish a written proclamation. Where there is no endorsement or statement in writing made by the court validating the proclamation, the proclamation is made according to law and the subsequent attachment and sale are invalid: Mian Jan Vs. Abdul, 27 Allahabad 572; Abdulla Vs. Jitu. 22 Allahabad 216. According to the decisions in Shib Charan Vs. Emperor, 39 Criminal Law Journal 570, 1938 Allahabad, 886 that even though under section 88 of the Code of Criminal Procedure a warrant cannot be issued unless a proclamation has already been issued under section 87 of the Code of Criminal Procedure, but when a warrant under section 88 has been issued it is to be presumed that a proclamation under section 87 has already been issued the presumption of law being that the acts of a Court must be presumed to have been duly performed. Here it is an admitted fact that no proclamation at all was issued and therefore be no presumption as to its having been issued. The warrant of attachment consequently and the attachment in persuance thereof are clearly illegal. I will refer to the other cases quoted a little later on.

*o.p.13. *30. It is alleged by the Plaintiffs that the property attached was not Dayanand's personal property but that it was joint family property and that therefore the attachment made was illegal. It would appear that an application, ( exhibit 36) was made for releasing the property from the attachment on depositing Rs. 11,000/- as being the price of the attached property, as stated in the notice exhibit 39 dated 10th May 1944. Below exhibit no. 36 the order issued to the Sub Inspector of Police of Ankola by the Sub Divisional Magistrate to whom the matter

has been transferred by the District Magistrate, the Police Sub Inspector as the Special Duty Police Sub Inspector to whom the work of attachment has been entrusted that as the property was the joint family property since Dayanand was an undivided co-parcener the moveable property should be attached immediately. Ultimately the Sub Divisional Magistrate, First Class, on due consideration released the property as being joint family property on the authority of the rulings referred to by him in his order which is below exhibit 57. And as I have already said that this point is conceded and the property was released and also the amount deposited was returned.

31. Some other points such as the want or description of the property to be attached was not mentioned in the warrant and that the property at Sirsor only should have been attached but not the property at Ankola. But this point is not pressed as I have said the parties confine themselves only to the two points mentioned by me at the outset.

32. It being established that the attachment was illegal it is to be considered now whether the Government that is the province of Bombay is liable for damages in the absence of the officers concerned who passed the orders referred to already as parties to the suit. It is argued for the Plaintiffs that as what the officers did was in pursuance of the delegation made by the Province of Bombay to the Collector the officers concerned namely the District Magistrate, the Sub Divisional Magistrate and the Police Sub Inspector are not necessary parties. In Kailash Chandra Nag vs. The Secretary of State for India, 40 Calcutta. 438. It is held that when the amount which is not legally realised a suit for the recovery thereof would lie against the Secretary of State for India, principle laid down in this suit is that the apportionment of costs made by the Deputy Magistrate under section 15. clause (4) of the Police Act for maintenance of the Police force was illegal and that the Secretary of State for India was liable to return the amount. In that case the Secretary of State for India alone was a party. The decision in 28 Bombay referred to in that case. The rule laid down in the latter case is " Where the duty to be performed is imposed by law

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and not by the will of the party employing the agent of the employer is not liable for the wrong done by the agent in such employment". In that case the Secretary of State for India in Council alone was a party. The Chief Constable had seized the goods of the Plaintiff not in obedience of to an order of the Executive Government but in persuance of a Statutory power vested in him by the Legislature. The seizure of the goods, it was held, was not in any sense productive of benefit to the revenues of the Bombay Government nor was it a transaction out of which profit could be derived and there has been ratification or adoption of the act. Here it is clear that the attachment was no persuance of any statutory provision but in obedience to an order of the Executive Government. The similar principle would appear to be laid down in 40 Bombay page 200 and 1916 Bombay 434 which cases I have mentioned before. In both the latter cases it was only the Secretary of State for India in Council that that was made a party but not any of the officers concerned. Rao Bahadur Chandvarkar, the Government Pleader refers me to the decisions in Secretary of State for India in Council vs. Shreegobind Choudhary, 59 Calcutta, 1289 and Ross Vs. Secretary of State for India, 57 Madras, page 5b, to show that the Secretary of State for India who was the Defendant in both the cases was held to be not liable for the act of the District Magistrates on the ground that they were done by him in the exercise of the statutory authority and not as an agent of Government. I have referred to the cases already in which this principle has been no doubt laid down but it has been held in these cases that if the act of the an officer complained of is not done under the statutory provisions but in obedience to an executive order as in the present case the Secretary of State for India would be liable. These cases, therefore in my opinion, do not apply to the facts of this case. If that is so, according to the rule of law discussed so far the Province of Bombay is liable but not the officers who took part in the proceedings and effected the attachment complained of by the Plaintiffs. That being so it would naturally follow that officers concerned are not necessary parties to the suit as contended by the Defendant. Consequently

consequently the application of the provisions of the Act VIII of 1850 cannot come into operation.

33. It may be noted that the very facts that orders were issued by the Executive Government and the attachment was made according to them there was at any rate implicit ratification or adoption of the attachment made. In the circumstances of the case, no question of ratification would arise. However, as I have just now said it can be presumed that there was implied ratification, there being no objection taken by the District Magistrate. It is argued by Rao Bahadur Chandavarkar that the officers are not liable in the sense that they are not made parties there can be no liability on the part of the Province of Bombay. I have already held that the officers are not necessary parties and the Act VIII of 1850 cannot come into operation. So this argument cannot hold good.

34. I am taken to section 270 of Government of India Act 1935 wherein it has been laid down that no proceedings civil or criminal shall be instituted against any person in respect of any act done or purporting to be done in the execution of his duty as a servant of the Crown in India or Burma before the relevant date, except with the consent, in the case of a person who was employed in connection with the affairs of the Government of India or the affairs of Burma, of the Governor General in his discretion and in the case of a person employed in connection with the affairs of a Province of the Governor of that province in his discretion. No Government servant is a party to this suit and clearly therefore this application cannot apply. The section 17(2) of the same Act is pointed out to me. Clause 2 stated " Orders and other instruments made and executed in the name of the Governor General shall be authenticated in such manners as may be specified in rule to be made by the Governor General and the validity of an order or instrument which is authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor General. I have held there was no foundation for the order of the District Magistrate because of the want of delegation as required by rules. That being so it is evident that

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this clause can have no application at all.

35. One more point argued by Rao Bahadur Chaudaverkar was that the ruling in 46 Bombay Law Reporter page 495 was passed after the order now challenged was made and that therefore that ruling cannot apply to the present case. I fail to understand this contention because when there was no delegation at all when the District Magistrate made his order it matters little whether the ruling was passed after the order was made.

O.P.No.17.

36. Now the Question that remains to be considered is as to the amount of damages to be awarded to the Plaintiffs who claimed Rs.2000/- even though according to them they were entitled to * Rs.2,073/-. No details are given in the plaint but the Plaintiff No.1 gives the details in his deposition (Exhibit No.40). He claims hire for his goods lorry for 5 months at the Government rate of Rs.320/- according to which he was paid, he says, even though he used to get Rs.400/- to Rs.450/- a month. He lost the interest on Rs.11,000/- as it was lying with the Government without bringing any interest. He claims interest at 6/- percent per annum for seven months. Then Rs.35/- are claimed on account of the Plaintiffs' goods lorry being used by Government for carrying the moveables from Sirsor to Akola. Rs.20/- are claimed as being the price of two tins of ground nut oil. Except Plaintiff No.1's oral testimony there is no independent evidence. Accounts are kept but they are not produced. The Defendant has led no evidence controverting all these things. But since the Plaintiffs did not give any details in their plaint regarding the items now mentioned by Plaintiff No.1 the Government was really not in a position to meet all these matters and lead evidence thereon. I am, therefore, of opinion that it would not proper to accept the word of Plaintiff No.1 alone and hold that he suffered a loss to the extent of Rs.2000/- and odd. In the circumstances of the case I think it reasonable to award Rs.750/- to the Plaintiff by way of damages for loss of hire for the motor bus seized and detained estimating the loss of hire to them at Rs.150/- per month which I estimate and take to be reasonable figure per

month and which would make Rs.750/- for five months.

37. The findings on the issues are, for these reasons, as recorded.

## Order.

Defendant do pay the Plaintiffs Rs.750/- with proportionate costs and future interest at 4/- per cent per annum from the date of suit till payment. Defendant to bear his own costs. D.C.No.13.

31st October 1945.

Sd. H.P.Suryawansi.

Civil Judge, (Senior Division).

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ਪੰਜਾਬ ਸਰਕਾਰ ਦੇ ਸਕੱਤਰ ਦੇ ਦਫ਼ਤਰ ਦੇ ਸਾਰੇ ਕਰਮਚਾਰੀਆਂ ਦੀ ਸੂਚਨਾ ਲਈ ਇਹ ਨੋਟਿਸ ਜਾਰੀ ਕੀਤਾ ਜਾਂਦਾ ਹੈ ਕਿ ਸਾਰੇ ਕਰਮਚਾਰੀਆਂ ਨੂੰ ਆਪਣੇ ਕੰਮ ਵਾਲੇ ਦਿਨ ਸਵੇਰੇ 10 ਵਜੇ ਤੋਂ ਸ਼ਾਮ 5 ਵਜੇ ਤੱਕ ਦਫ਼ਤਰ ਵਿੱਚ ਹਾਜ਼ਰ ਰਹਿਣਾ ਚਾਹੀਦਾ ਹੈ। ਜੇਕਰ ਕੋਈ ਕਰਮਚਾਰੀ ਬਿਨਾਂ ਕਿਸੇ ਵਾਜਬ ਕਾਰਨ ਦੇ ਦਫ਼ਤਰ ਵਿੱਚ ਹਾਜ਼ਰ ਨਹੀਂ ਹੁੰਦਾ ਤਾਂ ਉਸ ਦੀ ਤਨਖ਼ਾਹ ਵਿੱਚੋਂ ਕਟੌਤੀ ਕੀਤੀ ਜਾਵੇਗੀ ਅਤੇ ਉਸ ਦੇ ਖ਼ਿਲਾਫ਼ ਅਨੁਸ਼ਾਸਨੀ ਕਾਰਵਾਈ ਵੀ ਕੀਤੀ ਜਾ ਸਕਦੀ ਹੈ। ਇਹ ਨੋਟਿਸ ਤੁਰੰਤ ਪ੍ਰਭਾਵ ਨਾਲ ਲਾਗੂ ਹੋਵੇਗਾ ਅਤੇ ਅਗਲੇ ਹੁਕਮਾਂ ਤੱਕ ਜਾਰੀ ਰਹੇਗਾ। (ਦ) ਮਨਜੀਤ ਸਿੰਘ ਬਰਾੜ ਜ਼ਿਲ੍ਹਾ ਮੈਜਿਸਟ੍ਰੇਟ, ਫ਼ਿਰੋਜ਼ਪੁਰ ਛਾਉਣੀ ਦੇ ਸਾਰੇ ਵਸਨੀਕਾਂ ਨੂੰ ਸੂਚਿਤ ਕੀਤਾ ਜਾਂਦਾ ਹੈ ਕਿ ਮਿਤੀ 14-2-1944 ਨੂੰ ਸਵੇਰੇ 9 ਵਜੇ ਤੋਂ ਸ਼ਾਮ 5 ਵਜੇ ਤੱਕ ਛਾਉਣੀ ਦੇ ਸਾਰੇ ਪੋਲਿੰਗ ਬੂਥਾਂ ਉੱਤੇ ਵੋਟਾਂ ਪੈਣਗੀਆਂ। ਵੋਟਰ ਆਪਣੇ ਵੋਟਰ ਕਾਰਡ ਨਾਲ ਲੈ ਕੇ ਆਉਣ। ਵੋਟਾਂ ਦੀ ਗਿਣਤੀ ਮਿਤੀ 16-2-1944 ਨੂੰ ਸਵੇਰੇ 10 ਵਜੇ ਤੋਂ ਸ਼ੁਰੂ ਹੋਵੇਗੀ। ਉਮੀਦਵਾਰ ਜਾਂ ਉਨ੍ਹਾਂ ਦੇ ਏਜੰਟ ਗਿਣਤੀ ਦੇ ਸਮੇਂ ਹਾਜ਼ਰ ਰਹਿ ਸਕਦੇ ਹਨ। ਚੋਣ ਖ਼ਰਚ ਦੀ ਹੱਦ 500 ਰੁਪਏ ਤੈਅ ਕੀਤੀ ਗਈ ਹੈ। ਇਸ ਤੋਂ ਵੱਧ ਖ਼ਰਚ ਕਰਨ ਵਾਲੇ ਉਮੀਦਵਾਰ ਦੀ ਉਮੀਦਵਾਰੀ ਰੱਦ ਹੋ ਸਕਦੀ ਹੈ। ਕਿਸੇ ਵੀ ਉਮੀਦਵਾਰ ਨੂੰ ਵੋਟਰਾਂ ਨੂੰ ਰਿਸ਼ਵਤ ਦੇਣ ਜਾਂ ਡਰਾਉਣ-ਧਮਕਾਉਣ ਦੀ ਸਖ਼ਤ ਮਨਾਹੀ ਹੈ। ਅਜਿਹਾ ਕਰਨ ਵਾਲੇ ਵਿਰੁੱਧ ਫ਼ੌਜਦਾਰੀ ਕਾਰਵਾਈ ਕੀਤੀ ਜਾਵੇਗੀ। ਪੋਲਿੰਗ ਸਟੇਸ਼ਨ ਦੇ 100 ਗਜ਼ ਦੇ ਘੇਰੇ ਵਿੱਚ ਕੋਈ ਵੀ ਵਾਹਨ ਨਹੀਂ ਲਿਜਾਇਆ ਜਾਵੇਗਾ। ਵੋਟਰ ਆਪਣੀ ਵੋਟ ਗੁਪਤ ਤਰੀਕੇ ਨਾਲ ਪਾਉਣ ਦਾ ਹੱਕਦਾਰ ਹੈ। ਕਿਸੇ ਨੂੰ ਵੀ ਵੋਟ ਪਾਉਣ ਲਈ ਮਜਬੂਰ ਨਹੀਂ ਕੀਤਾ ਜਾ ਸਕਦਾ। ਵੋਟਰ ਸੂਚੀ ਵਿੱਚ ਨਾਮ ਨਾ ਹੋਣ ਦੀ ਸੂਰਤ ਵਿੱਚ ਵੋਟਰ ਨੂੰ ਵੋਟ ਪਾਉਣ ਦਾ ਹੱਕ ਨਹੀਂ ਹੋਵੇਗਾ। ਵੋਟਰ ਸੂਚੀ ਵਿੱਚ ਸੋਧ ਲਈ ਦਾਅਵੇ ਮਿਤੀ 1-2-1944 ਤੱਕ ਦਾਖ਼ਲ ਕੀਤੇ ਜਾ ਸਕਦੇ ਹਨ। ਇਹ ਨੋਟਿਸ ਮਿਤੀ 20-2-1943 ਨੂੰ ਜਾਰੀ ਕੀਤਾ ਗਿਆ ਹੈ। ਇਸ ਦੀ ਉਲੰਘਣਾ ਕਰਨ ਵਾਲੇ ਵਿਰੁੱਧ ਕਾਰਵਾਈ ਕੀਤੀ ਜਾਵੇਗੀ।

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Sd. U.S. Mulla.

Sd. H.P. Suryawanshi.
Civil Judge (S.D.)
Kanwar
17-11-1945.

Sd. M.G. Chandavarkar.

Ft 29-44 auth

This relates to the judgment in Karwar Civil Suit No. 111 of 1944. The judgment is adverse to Govt.

2 Please see the note at page 51 of the suit file, where defence of the suit was sanctioned. The suit was to recover damages for wrongful attachment. It may be conceded that the attachment was illegal on the following two grounds:

(1) An order under section 88 of the Criminal Procedure Code without first issuing a proclamation under s. 87 was not tenable in law; (2) Seizure of joint family property was illegal. In fact on the latter ground the attachment was raised by the Magistrate.

3 But the main question was whether there was a cause of action against Govt: paras. 2 to 4 of brief. These contentions were raised ~~from~~ for Govt: (1) The Magistrate acted in the exercise of his statutory power, and not in obedience to an order of the executive Govt; (2) The principle of master's liability for his servants' tort does not apply to Govt, and further in this case even the servants incurred no liability, so that none attached itself to Govt; and (3) the action was barred under s. 17(2) of the Defence of India Act.

4 These contentions were rejected by the Judge. But before coming to that it is necessary to consider an argument which he has placed in the forefront of his judgment.

5 That argument is that "the delegation of the powers under the amended rule 26(5B)(b) was made only after the date of the District Magistrate's order and report ex 33 dated 26.10.1942" and that therefore all that took place was "without jurisdiction". (Para. 28 of judgment).

6 There can be no doubt that the Judge has fallen into an error. (1) Throughout he considers rule 26(5B)(b) and that is unfortunate. On 26.10.1942 the District Magistrate issued two instruments, one, the report under rule 26(5B)(a) to the Sub Divisional Magistrate, and two, the notified order under rule 26(5B)(b). In this case we are concerned with the first only and not with the second. (2) It follows from (1) that 46 Bom.L.R. 495 is inapplicable. That case was in respect of a prosecution for breach of an order under rule 26(5B)(b) passed on 6.9.1942. Sub-rule (5B) had been revised on 15.8.1942 and the provisions of sub-rule 5B(b) were new. The Court held that the earlier delegation of powers under rule 26 did not avail for the purposes of the added provisions of sub-rule (5B)(b). There is nothing in the language of the High Court judgment, or in the principle decided, which affects sub-rule (5B)(a). (3) The provisions of sub-rule (5B)(a) were already there in sub-rule (5B) before 15.8.1942, so the earlier delegation was enough for this case.

7 In regard to the first of Govt's contentions stated above in para. 3, the Judge accepts the principle but states that the attachment was in pursuance of executive orders, and does not give any reasons for the statement. The second contention has not been appreciated. The Federal Court decision in Maharani of Nabha's case (1944 F.L.J. 115 a case of damages for false imprisonment) which was relied upon for Govt. and which discusses the matter at length is not referred to in the judgment. In regard to the contention based on s. 17(2) of the Defence of India Act, the Judge refers to s. 17(2) of the Govt. of India Act and says it is inapplicable. (Para. 34 of judgment).

HS 49

8 In the end the Judge has made a decree for Rs. 750/- instead of the one for Rs. 2000/- asked for by the plaintiffs.

9 The D.G.P's report shows a proper appreciation of the true position about the question of delegation as considered by the Judge. The judgment is wrong and, as recommended by the Collector, an appeal should be filed, on the lines of the brief and the D.G.P's letter dated 12.11.1945.

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10 The judgment is dated 31.10.1945. Limitation will expire, as stated by the D.G.P, by the second week of December.

24/11

ALR I agree. "A" may be done

RLA I agree. This seems to be a fit case for appeal. 25/11/45

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-11-45

Secy HD I agree
28.11.45

24/11

5117

Suits:

Kanara.
For damages for wrongful attachment.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 9676
Bombay Castle, 5th December 1945.

Slip Y

Read Government Resolution, Legal Department, No. 236, dated the 9th January 1945.

P.2

× Endorsement by the District Government Pleade, Kanara No. 319 dated 1st November 1945 forwarding a copy of his letter to the Collector of Kanara No. 318 dated 1st November 1945 stating that the suit noted in the margin was decided by the Civil Judge (Senior Division) Karwar on 31st October 1945 decreeing the plaintiffs' claim for Rs. 750 with proportionate costs and future interest at 4 per cent from the date of suit, till payment and the defendant being ordered to bear his own costs.

In the Court of the First Class Sub-Judge, Karwar.
Civil Suit No. 111 of 1944.
Mukund Narayan Prabhu, Sirurkar, and 4 others . ... .. Plaintiffs;
Versus.
The Province of Bombay. .. Defendant.
Claim- Rs. 2,000/-.

P.22

× Endorsement by the District Government Pleader, Kanara No. 327 dated 12th November 1945 forwarding a copy of his letter to the Collector of Kanara No. 326 dated 12th November 1945 requesting Government for sanction to file an appeal against the decision of the Civil Judge (Senior Division), Karwar dated 31st October 1945.

P.23

× Letter from the Collector of Kanara, No. 7342 dated 19th November 1945 forwarding his Report under Rule 132 of the Law Officers Rules.

RESOLUTION. - Sanction is accorded to the institution of an appeal against the decision of the Civil Judge (Senior - Division), Karwar, dated 31st October 1945 on the lines of the brief accompanying Government Resolution, Legal Department, No. 236 dated 9th January 1945 and the grounds contained in the letter of the District Government Pleader, Kanara, No. 326 dated the 12th November 1945 addressed to the Collector of Kanara.

By order of the Governor of Bombay,

Issued orders at Pg. 55
SDP 5/12

Original

R. M. Mehta

R.M. MEHTA,
Assistant Secretary to Government.

Subd. for signature
mak 5/12

A.S. Per 5/12

To
The Home Department,
The Commissioner, S.D.
The Collector of Kanara,
The District Government Pleader, Kanara (with papers received from the Collector of Kanara).

LK.

1275

Civil Appeal No. 189 of 1945.

In the District Court of Kanara, Karwar.

( Civil Suit No.111 of 1944 of the Court of the Civil Judge Senior Division, Karwar)

The Province of Bombay. ... ... Appellant ( Original defendant).

Versus

1. Mukund Narayan Prabhu, Sirurkar, age 52, G.S.B.
2. Rukmini kom Mukund Prabhu Sirurkar, age 44, G.S.B.
3. Gajanan Mukund Prabhu Sirurkar, age 20, G.S.B.
4. Narayan Mukund Prabhu Sirurkar, age 14 G.S.B. minor by his guardian and next friend Mukund Narayan Prabhu Sirurkar.
5. Nagesh Mukund Prabhu Sirurkar, age 12 G.S.B. minor by his guardian and next friend Mukund Narayan Prabhu, Sirurkar.

All Inamdaars and residents of Siroor, Ankola, North Kanara.

..... Respondents ( Original plaintiffs nos. 1 to 5).

Claim Rs. 750/- for all purposes.

The above named appellant begs to appeal against the decree dated 31st October 1945 but signed on 17th November 1945 passed by Mr. H.P.Suryawanshi, the Civil Judge Senior Division, Karwar, on the following among other Grounds:-

Grounds.

1. The decree of the lower court is contrary to law and not warranted by the evidence in the case.
2. The learned Magk Civil Judge wrongly held that the attachment of moveable property complained of was without authority.
3. He wrongly held that the said attachment was not made lawfully and in good faith.
4. It was wrongly held that the plaint discloses any cause of action against the defendant.
5. It was wrongly held that the suit against the defendant is not barred under section 17 clause 2 of the Defence of India Act.
6. It was wrongly held that the act of the several Government officers concerned are not protected under section 17(1) of the Defence of India Act, Judicial Officers Protection Act and section 270 of the Government of India Act.
7. The learned Judge was in error in considering that the order Ex. 33 was an order under Rule 26(5)(B)(b) of the Defence of India Rules.
8. The learned Judge was wrong in holding that the District Magistrate was not competent to pass an order under Rule 26(5)(B)(a) and that the previous delegation of 1941 was ineffective.
9. The ruling in 46 Bombay Law Reporter page 495 was not properly considered.
10. Even if it be supposed that the District Magistrate made the report Ex. 33 without proper authority, it was wrongly held that Government was liable for the improper and unauthorised acts of the District Magistrate and other public servants concerned.
11. The learned Judge was wrong in not giving findings on issues nos. 3 and 4. On a proper consideration of these issues he should have found them in favour of the defendants
12. The learned Judge was wrong in holding that the attachment was made in accordance with the orders issued by the executive Government and not in pursuance of statutory provisions.
13. The learned Judge's view that there was an implied ratification or adoption of attachment by Government is clearly wrong.
14. He was wrong in holding that the defendant was liable to pay damages.

55 125



15. He was wrong in holding that the plaintiffs were entitled to any damages. The sum of Rs. 750/- awarded is excessive. If ~~xxx~~ at all, plaintiffs were entitled only to nominal damages.

16. The several rulings on the points arising in the case have not been properly considered and appreciated.

17. The order as to costs is clearly wrong. Plaintiffs were not entitled to any costs. Defendant should have been awarded ~~his~~ their full costs.

Sd. L. G. Chandavarkar.

District Government Pleader, Kanara.

Presented on 10/12/1945.

Sd. M.G.Chandavarkar.
District Government Pleader, Kanara
Pleader for appellant.

2210—5,700—11-44—B(a)

Civ. A 42 k.

ಅಪೀಲಿನೊಳಗಿನ
ಹುಕುಮುನಾಮೆಯು
(ಆರ್ಡರ ೪೧, ರೂ. ೨೫).

(ಫಾರ್ಮ ನಂಬರು ೯,
ಪರಿಶಿಷ್ಟ ಗ, ಶೆಡ್ಯೂಲ ೧)

# ಹುಕುಮನಾಮೆಯು

ಕಾರವಾರ ಇಲ್ಲಿಯ ಹಿರಿಯ ಶ್ರೇ/೧ ಜಡ್ಜ ಕೋರ್ಟಿನಲ್ಲಿ

ಮುಕ್ಕಾಮು ಕಾರವಾರ ಇಲ್ಲಿ. ತಾ॥ 10

ಅಪೀಲ ಮೊಕದಮೆ ನಂಬರು 189 ಇ೯೪೬-ನೇ ಸೈಕಿ

ಮಾಧಾಕಾಕ ಮಲ್ಲಪ್ಪ ಶ್ಯಾಂಭಗ ನಿಕಮಕಾರ
ಠಾ॥ ಬಾಡ ತಾಲೂಕಾ ಕಾರವಾರ

} ಅಪೀಲಿಂಟ
(ಮೊದಲನೇ ಪ್ರತಿವಾದಿ).

1. ಕುಶಾಳಾಯ ನಾರಾಯಣ ವೈದ್ಯ ಶೆಟ್ಟಿಗಾರ ಕಂಪು ಕಾರವಾರ
2. ಕುಳ್ಳಿಗಾ ಶೆಟ್ಟಿಯಾ ಕುಶಾಳಾಯ ವೈದ್ಯ ಶೆಟ್ಟಿಗಾರ ಕಂಪು ಕಾರವಾರ
3. ಮಹಾಬಲ ಕುಶಾಳಾಯ ವೈದ್ಯ ಶೆಟ್ಟಿಗಾರ ಕಂಪು ಕಾರವಾರ
4. ನಾರಾಯಣ ಕುಶಾಳಾಯ ವೈದ್ಯ ಶೆಟ್ಟಿಗಾರ ಕಂಪು ಕಾರವಾರ
5. ನಾಗೇಶ ಕುಶಾಳಾಯ ವೈದ್ಯ ಶೆಟ್ಟಿಗಾರ ಕಂಪು ಕಾರವಾರ
6. ವೆಂಕಟರಮಣ ಶೆಟ್ಟಿ ಕುಶಾಳಾಯ ನಾರಾಯಣ ವೈದ್ಯ ಶೆಟ್ಟಿಗಾರ ಕಂಪು ಕಾರವಾರ ಇಲ್ಲಿಯ ಹಿರಿಯ ಶ್ರೇ/೧ ಜಡ್ಜ ಕೋರ್ಟಿನ ಸನ್ ೧೯೪೬ ನೇ

} ರಿಸ್ಪಾಂಡೆಂಟ
(ಮೊದಲನೇ ಪ್ರತಿವಾದಿ
1-5).

ಇಸವಿಯ ನಂಬರು 111 ನೇದರಲ್ಲಿ ತಾರೀಖು 31 ನೇ ಅಕ್ಟೋಬರ ತಿಂಗಳ ಸನ್ ೧೯೪೫-ನೇ
ಇಸವಿಯ ಹುಕುಮು ನಾಕು ಮೇಲಿ ಸದರೀ ಅಪೀಲು ದಾಖಲ ಮಾಡೋಣದರಲ್ಲಿ ಬಂದಿರುತ್ತದೆ.
ಮೇಲಿ ಬೇಳದ 6 ಜನರು ಇವನು
31-10-45-ನೇ ತಾರೀಖಿನ ಹುಕುಮು ನಾಕು ಮೇಲೆ ಕಾರವಾರ ಇಲ್ಲಿಯ
ಹಿರಿಯ ಶ್ರೇ/೧ ಜಡ್ಜ ಕೋರ್ಟಿಗೆ ಅಪೀಲು ಮಾಡಿರುತ್ತಾನೆ.
ಈ ಅಪೀಲು ಸನ್ ೧೯೪೬ ನವಂಬರ ತಿಂಗಳನ 29 ತಾರೀಖಿನ ದಿವಸ ಮಾ. ಶ್ರೀ. ಎಚ್. ಎಸ್. ಕಾಮತ್ ಬಿ.ಎ.ಬಿ.ಎಲ್.
ಮುಂಕಿ, ಅಪೀಲಿಂಟನ ತರ್ಫಿನಿಂದ ಠಾ॥ ಬಾ॥ ತಾ॥ ಕಾರವಾರ ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ
ರಿಸ್ಪಾಂಡೆಂಟನ ತರ್ಫಿನಿಂದ ಮಾ. ಶ್ರೀ. ಕೆ. ಎಸ್. ಕಾಮತ್ ಬಿ.ಎ.ಬಿ.ಎಲ್. ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ
ಸುನಾವಣಿಯ ಬಗ್ಗೆ ಬಂಜುದ್ದರ ಮೇಲಿಂದ ಹೀಗೆ ಹುಕುಮು ಮಾಡುವದರಲ್ಲಿ ಬರುತ್ತದಲ್ಲ—

ಈ ಪ್ರಕರಣದಲ್ಲಿ ಪ್ರತಿವಾದಿಗಳು ಹಾಜರಾಗಿದ್ದಾರೆ ಮತ್ತು ಅಪೀಲಿಂಟನ ಪರವಾಗಿ ಅವರ ವಕೀಲರು ಹಾಜರಾಗಿದ್ದಾರೆ. ಅಪೀಲಿಂಟನ ಪರವಾಗಿ ಅವರ ವಕೀಲರು ಮಾಡಿದ ವಾದವನ್ನು ಕೇಳಿದೆ. ಪ್ರತಿವಾದಿಗಳ ಪರವಾಗಿ ಅವರ ವಕೀಲರು ಮಾಡಿದ ವಾದವನ್ನು ಕೇಳಿದೆ.

ನಂ 59



ಈ ಕೆಳಗೆ ವಿವರಿಸಿದಂತೆ ಈ ಅಪೀಲಿಗೆ ಆದ ವೆಚ್ಚವನ್ನು ಎಂದರೆ, ಒಟ್ಟಿಗೆ

ರೂಪಾಯಿಗಳನ್ನು

ಕೊಡಬೇಕು; ಮತ್ತು ಮೂಲ ದಾವೆಯ ವೆಚ್ಚವನ್ನು

ಕೊಡಬೇಕು.

ಅಪೀಲಿನ ವೆಚ್ಚವು

| ಅಪೀಲೆಂಟ. | ರಕಮು. | | | ರಿಸ್ಪಾಂಡೆಂಟ. | ರಕಮು. | | |
|---|---|---|---|---|---|---|---|
| | ರೂ. | ಆ. | ಪೈ | | ರೂ. | ಆ. | ಪೈ |
| ೧. ಅಪೀಲಿನ ಯಾದಿಯ ಬಗ್ಗೆ ಸ್ಟಾಂಪು ನಂ 1 | 70 | 5 | . | ೧. ಅಧಿಕಾರ ಪತ್ರದ ಬಗ್ಗೆ ಸ್ಟಾಂಪು.... | | | |
| ೨. ಅಧಿಕಾರ ಪತ್ರದ ಬಗ್ಗೆ ಸದರ ~~ನಂ 2-3~~ | ~~1~~ | ~~14~~ | - | ೨. ಅರ್ಜಿಯ ಬಗ್ಗೆ ಸದರ .... | | | |
| ೩. ದಾಖಲಾದ ಕಾಗದಗಳ ಬಗ್ಗೆ ಸದರ.... ನಂ 2-3 | 1 | 14 | 0 | ೩. ದಾಖಲಾದ ಕಾಗದಗಳ ಬಗ್ಗೆ ಸದರ. | | | |
| ೪. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣಿ ನಂ 1 .... | 3 | . | - | ೪. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣಿ .... | | | |
| ೫. 750/- ರೂಪಾಯಿಗಳ ಮೇಲೆ ವಕೀಲನ ಫೀ .... | 37 | 8 | 0 | ೫. 750/- ರೂಪಾಯಿಗಳ ಮೇಲೆ ವಕೀಲನ ಫೀ .... | 37 | 8 | |
| ೬. ನಕಲುಗಳ ಬಗ್ಗೆ ಫೀ ನಂ. 2-3 .... ೬ ಪೈಸೆಗೆ ಒಂದು | 16 | 11 | - | ೬. ನಕಲುಗಳ ಬಗ್ಗೆ ಫೀ ಬೇಕಾಗಿಲ್ಲ | 0 | 8 | - |
| ೭. ಉಲಟ ಹರಕತಿಯ ಮೇಲೆ ವಕೀಲನ ಫೀ .... | 17<br>37 | 0<br>8 | .<br>. | ೭. ಹರಕತ ಅರ್ಜಿಗೆ ಸ್ಟಾಂಪು ನಂ 7.... | 70 | 5 | |
| | | | | ೮. ಉಲಟ ಹರಕತಿಯ ಮೇಲೆ ವಕೀಲನ ಫೀ .... | 37 | 8 | |
| | | | | ನಂ 1 ಕ್ಕೆ ಮಾತ್ರ ಆ 0-10 ನಾಕಂಜೂರ | | | |
| ಒಟ್ಟು.... | 183 | 14 | - | ಒಟ್ಟು.... | 145 | 13 | |

ಈ ಹೊತ್ತು ತಾರೀಖು 29 ತಿಂಗಳು ನವಂಬರ ಸನ್ ೧೯46ನೇ ಇಸವಿಯ ದಿನ

ನಮ್ಮ ಸಹಿ ಮಾಡಿ ಮತ್ತು ಕೋರ್ಟಿನ ಮೊಹರು ಮಾಡಿ ಕೊಡಲ್ಪಟ್ಟಿತು.

ತಪಾಸು ಮಾಡಿ ನೋಡಿತು ಸಮನಾಗಿ ಅದೆ.

sd. Shetti L.S.
ತಾರಕೂನ.

sd R. N. Hanidar
Bench clerk

sd. P. H. Gunjal
6-12-46
ಜಜ್ಜ.
Dist Judge,

ಅಪೀಲೆಂಟ ವಕೀಲ. sd M. G. Chandargekar (ಮಲ್ಲಪ್ಪ ಗುರುಪಾದಪ್ಪ ಚಂದರಗಿ)

sd. K. R. Haldipurkar
ರಿಸ್ಪಾಂಡೆಂಟ ವಕೀಲ.

[ಈ ನೊಕದಮೆಯಲ್ಲಿಯ ಪಕ್ಷಕಾರರಿಗೆ ಹೀಗೆ ಸೂಚನೆ ಕೊಡುವದರಲ್ಲಿ ಬರುತ್ತದಲ್ಲ, ಅವರು ತಾವು ಹಾಜರು ಮಾಡಿದ ಯಾವವಾದರೂ ದಸ್ತೈವಜುಗಳನ್ನು ಅವರು (ತಿರುಗಿ) ತೆಗೆದುಕೊಂಡು ಹೋಗದಿದ್ದರೆ ಆ ದಸ್ತೈವಜುಗಳ ಅಪೀಲು ಮಾಡಿದ್ದರೆ, ಆ ಅಪೀಲು ನಿಕಾಲಿಯಾದ ಮೇಲೆ, ನಾಶ ಮಾಡುವದಕ್ಕೆ ಪಾತ್ರವಾಗುವವು (ಅಂದರೆ ಅವು ನಾಶ ಮಾಡುವದರಲ್ಲಿ ಬರುವವು.)]

61 105 51

Received on 10th December 1945
Registered on 11th December 1945
Decided on 29th November 1946
Duration - 11 months and 19 days.

Exhibit No.9.

In the District Court of Kanara

at Karwar.

Appeal No.189 of 1945 from Decree in Civil Suit No.111 of 1944 of the Court of the Civil Judge (Senior Division) Mr.H.P.Suryawanshi of Karwar.

Pleaders.

Government Pleader

M.G.Chandavarkar.

The Province of Bombay ... Appellant (Original Defendant)

against

1. Mukund Narayan Prabhu, Sirurkar, age 52, Gouda Saraswat Brahmin

2. Rukmini Kom Mukund Prabhu Sirurkar, age ~~22~~,44 Gouda Saraswat Brahmin.

3. Gajanan Mukund Prabhu Sirurkar, age 20, Gouda Saraswat Brahmin

M/S. Haldipur & G.P.Pai.

4. Narayan Mukund Prabhu Sirurkar, age 14, Gouda Sarawat Brahmin, minor by his guardian and next friend Mukund Narayan Prabhu, Sirurkar,

5. Nagesh Mukund Prabhu Sirurkar, age 12, Gouda Saraswat Brahmin, minor by guardian and next friend Mukund Narayan Prabhu, Sirurkar.
All landholders and residents of Siroor, Ankola, North Kanara ..... Respondents

(Original Plaintiffs Nos.1 to 5).

Claim - Rs.750-0-0 for all purposes.

The action giving rise to the present appeal was instituted by the Plaintiffs-respondents to recover from the Defendant-appellant a sum of Rs.2000/- as damages by way of compensation for the alleged illegal and wrongful attachment and seizure of their moveables from their house at Shiroor and shop at Ankola together with future interest thereon at 6 per cent per annum.

2. It was alleged on behalf of the Plaintiffs-respondents that the District Magistrate, Kanara, had issued an order for the arrest and detention of Dayanand alias Ramchandra Mukund Prabhu, the son of the Plaintiffs Nos. 1 and 2, under

63 167

Rule 26 (5-B)(b) of the Defence of India Rules and that thereafter he passed another order stating that the said Dayanand had absconded and to take action against him and his property under the provisions of sections 87 and 88 of the Criminal Procedure Code under the said amended sub-rule. Further, it was alleged that the Sub-Inspector of Police of Ankola attached and seized the moveable property of the Plaintiffs-respondents under the warrant issued by the Sub-Divisional Magistrate illegally and unauthorisedly. Furthermore it was alleged that the order for attachment issued by the District Magistrate was illegal, that the moveable property attached was not of the joint family, belonging exclusively to the Plaintiff No.1 and that even if the moveables were of the joint family, the attachment was illegal and hence they were entitled to claim a sum of Rs.2073/- as damages by way of compensation.

3. The Plaintiffs' claim was resisted on behalf of the Defendant-appellant on various grounds. It was contended on behalf of the Defendant that the order of attachment of moveable property was legal, that the attachment and seizure were lawfully made in good faith and that the moveable properties attached were of the joint family, Dayanand having interest therein. It was further contended that both the Sub-Divisional Magistrate as well as the Sub-Inspector of Police acted by viftue of their statutory power and not by executive order of Government and hence the Government was not liable for the improper conduct, if any, of the public officers, that there was no cause of action against the Government and that the action of the Public Officers was protected by law under section 17(1) of the Defence of India Act, the Judicial Officers' Protection Act and section 270 of the Government of India Act. Furthermore it was contended that the suit was barred under section 17(2) of the Defence of India Act, disputing the quantum of damages.

4. The lower court held that the attachment of the moveable property was illegal, that it was made illegally and without good faith and that the plaint disclosed a cause of action against the

Government. Further, it held that the acts of the Government Officers concerned were not protected by Section 17(1) of the Defence of India Act, Judicial Officers Protection Act and section 270 of the Government of India Act, that there was no bar of section 17(2) of the Defence of India Act to the suit and that the Plaintiffs were entitled to claim damages from the Defendant. Furthermore it held that a sum of Rs.750/- was due from the Defendant on account of damages. Accordingly, a decree was passed in favour of the Plaintiffs against the Defendant directing the Defendant to pay a sum of Rs.750/- together with proportionate costs and future interest at 4 per cent per annum. The rest of the Plaintiffs' claim was rejected.

5. It appears that both the parties are dissatisfied with the result of the suit. Being aggrieved by the decree the Defendant has preferred this appeal; while the Plaintiffs have filed cross-objections in respect of the claim disallowed by the lower court.

6. The following points were pressed in the appeal:

(1) Whether it has been proved that the attachment of the moveables is illegal, as alleged ?

(2) If so, whether the Province of Bombay is liable for the unauthorised acts of its servants ?

(3) Whether the acts of the Government Officers concerned are protected by section 270 of the Government of India Act and section 17 (1) of the Defence of India Act ?

(4) Whether there is a bar of section 17(2) of the Defence of India Act to the present suit ?

(5) Whether the Plaintiffs are entitled to claim any and what damages ?

7. My findings are:-

(1) Yes.
(2) Yes.
(3) No; No.
(4) No;
(5) Yes; Rs.750

Reasons.

8. The main facts of the case were not in dispute and were as follows. The Defendant-appellant is the Province of Bombay. The Plaintiffs Nos. 1 and 2 are residents of Shiroor in Ankola Taluka, being husband and wife and the Plaintiffs Nos. 3 to 5 are their sons. They have got another son named Dayanand alias Ramchandra Mukund Prabhu who was practising at Karwar in 1942. All the Plaintiffs and Dayanand constituted a joint Hindu family, the Plaintiff No.1 being its manager. The District Magistrate, Kanara, had issued on October 7,1942 an order under Rule 26 of the Defence of India Rules for the arrest and detention of Dayanand alias Ramchandra Mukund Prabhu of Shiroor and certain other persons. It was reported to the District Magistrate that they were absconding with a view to avoid execution of the said order. Thereupon the District Magistrate issued an order on October 26, 1942 under Rule 26 (5-B)(b) of the Defence of India Rules requiring all the absconding persons to appear before the Sub-Divisional Magistrate Karwar Town at Karwar within one month of the date of the order, vide exhibit No.32. On the very day the District Magistrate made a report to the Sub-Divisional Magistrate First Class, Karwar Town to take action against the said persons and their property under Sections 87 and 88 of the Criminal Procedure Code as required by the amended sub-rule 26(5-B)(b) of the Defence of India Rules, vide Exhibit No.33. On November 26,1942 none of the persons in respect of whom the District Magistrate had made the order appeared before the Sub-Divisional Magistrate Karwar Town and hence he issuedx an order that the moveable properties belonging to the said persons be attached under section 80 of the Criminal Procedure Code and authorised the Sub-Inspector of Police of Ankola to attach the moveable properties belonging to each of the said persons in their respective villages by seizure.

9. Thereupon the Police Sub-Inspector, Ankola, attached certain moveables on February 8,1943 in the house of the Plaintiffs at Shiroor and certain moveables including a lorry in their shop at Ankola on February 9,1943. Subsequently the Plaintiff No.1 deposited a sum of Rs.11,000/- and odd and took back the attached

FB 67 1/-

properties. After five months he got back his lorry. So far the facts were not in dispute.

10. Subsequently on February 4,1944 the Plaintiffs gave a notice Exhibit No.26/~~mf~~ to the Defendant as required under section 80 of the Civil Procedure Code claiming a sum of Rs.2073/- on account of damges alleging that the attachment of their moveable property was illegal and wrongful. By virtue of the said notice they indicated their intention to file a suit in case it was not complied with. It appears that it was not complied with by the Province of Bombay and hence the Plaintiffs instituted the present suit on April 10, 1944 against the Government of Bombay for damages to the extent of Rs.2000/- by way of compensation for the alleged illegal and wrongful attachment of their moveable property.

11. The main contention of the Plaintiffs was that the attachment of their moveables under Rule 26 (5-B)(b) of the Defence of India Rules was illegal and ultra vires, inasmuch as there was no delegation of that rule to the District Magistrate after it was amended. Their another ground of attach was that there was no proclamation issued under section 87 of the Criminal Procedure Code prior to the attachment. The Plaintiffs' claim was resisted on behalf of the Province of Bombay on various grounds as detailed above. The lower court repelled all its grounds and found in favour of the Plaintiffs. However, on the point of the quantum of damages it held that the Plaintiffs were entitled to a sum of Rs.750/- rejecting the rest of the claim. These findings were challenged for the Appellant; while the Plaintiffs filed cross-objections regarding the rejcted claim.

12. It was urged by the learned Government Pleader for the Appellant that the powers of attachment were already existing in the original Rule 26 (5-B), that therefore the prior delegation extended to the power of attachment and hence the attachment was valid. On the contrary, it was argued for the Respondents that the old rule 26 (5-B) was wholly amended by the subsequent amendment, that the delegation of the powers under the old rule

175-69

automatically vanished in August 1942 when the amendment was made, that the new delegation under the amended rule was in July 1943, that the District Magistrate acted under the amended sub-rule and hence the attachment was illegal. In support of this contention reliance was placed on the case of Emperor V.Rayangouda Lingangouda, 46 Bombay Law Reporter page 495.

13. In order to understand the arguments advanced on both sides it is essential to note the original and the amended sub-rule of Rule 26(5-B) of the Defence of India Rules, Rule 26(5-B) as it originally stood consisted of only one paragraph,including the present sub-rule(5-B) (a) and it ran as follows:- "If the Central Government or the Provincial Government, as the case may be, has reason to believe that a person in respect of whom that Government has made an order under sub-rule (1) directing that he be detained, has absconded or it concealing himself so that such order cannot be executed, that Government may make a report in writing of the fact to a Presidency Magistrate or a Magistrate of the first class having jurisdiction in the place where the said person ordinarily resides; and thereupon the provisions of sections 87,88 and 89 of the Code of Criminal Procedure,1898, shall apply in respect of the said person and his property as if the order directing that he be detained were a warrant issued by the Magistrate". No doubt, the latter part of the sub-rule empowers the District Magistrate to order attachment of the property under provisions of section 87, 88 and 89 of the Criminal Procedure Code. Thereafter the original sub-rule (5-B) was wholly substituted by the notification dated August 15,1942. After the amendment the amended rule runs as follows:- "(5-B) If the Central Government or the Provincial Government, as the case may be, has reason to believe that a person in respect of whom that Government has made an order under clause (b) of sub-rule (1) directing that he be detained has absconded or is concealing himself so that such order cannot be executed, that Government may -

(a) make a report in writing of the fact to a presidency Magistrate, or a Magistrate of the first class having jurisdiction

71 177

in the place where the said person ordinarily resides; and thereupon the provisions of sections 87,88 and 89 of the Code of Criminal Procedure,1898, shall apply in respect of the said person and his property as if the order directing that he be detained were a warrant issued by the Magistrate;

(b) By notified order direct the said person to appear before such officer, at such place and within such period as may be specified in the order; and if the said person fails to comply with such direction he shall, unless he proves that it was not possible for him to comply therewith and that he had within the period specified in the order informed the officer of the reason which rendered compliance therewith impossible and of his whereabouts, he punishable with imprisonment for a term which may extend to seven years or with fine or with both."

Thus, the original sub-rule (5-B) is divided into three paragraphs, viz., (5-B), (a) and (b).

14. Now, the delegation of power under the original sub-rule (5-B) was on December 19, 1941. Admittedly, after the amendment there was no fresh delegation of powers by the Government of Bombay to the District Magistrate,Kanara. It was only on July 17, 1943 that the Government delegated its powers under Rule 26(5-B) (b) to the District Magistrates within the Province. In the meanwhile on October 26,1942 the District Magistrate,Kanara, issued an order to the Sub-Divisional Magistrate First Class,Karwar Town, under rule 26(5-B)(b) of the Defence of India Rules for taking action against the absconding Prabhu and others and their property under sections 87 and 88 of the Criminal Procedure Code as required by the amended sub-rule rule of 26 of the Defence of India Rules,vide Exhibit No.33 the report of the District Magistrate,Kanara, As already pointed out above, the Sub-Divisional Magistrate,Karwar Town,issued orders to the Police Sub-Inspector of Ankola to attach the moveable property belonging to each of the persons who were

FFT 2 73

absconding and in pursuance of the said order on February 8 and 9 of 1943 the Police Sub-Inspector attached the moveable property of the Plaintiff No.1. So far the facts were not in dispute.

15. No doubt, under the original sub-rule (5-B) the District Magistrate was empowered to order the attachment of property under Section 87 and 88 of the Criminal Procedure Code. But the said original sub-rule (5-B) was wholly substituted by the amended sub-rule on August 15, 1942. Now, the District Magistrate, Kanara, acted under the amended sub-rule (5-B) (b). But there was no delegation at all regarding the amended sub-rule. When the original sub-rule was substituted on August 15, 1942 the delegation of the said sub-rule was automatically vanished in view of the amendment. As there was no fresh delegation of powers under the amended sub-rule, it irresistably follows that the order passed by the District Magistrate, Kanara, on October 26, 1942 is obviously erroneous, being ultra vires. Hence, the attachment made subsequently in pursuance of the said illegal order was illegal.

16. Now, the view taken by me as above is covered by an authority, vide the case of Emperor V. Rayagouda Lingangouda. It is laid down therein as follows, "The delegation of its powers by a Provincial Government under a rule of the Defence of India Rules, 1939, to District Magistrate within the province, under section 2(5) of the Defence of India Act, 1939, is valid only to the extent of the rule as it stands at the date of the delegation. It does not operate to cover amendments madein the rule subsequent to such date. A fresh delegation is necessary to bring the amendments into effect for the exercise of powers under the amendments. The delegation of powers under the rules cannot therefore be deemed to cover the delegation of such powers as might thereafter be brought into existence for the first time by re-enactment of the rules." Thus, according to the principle laid down therein the old delegation does not operate to cover amendments made in the rule and a fresh delegation is necessary to

bring the amendments into effect for the exercise of powers under the amendment. As there was no fresh delegation of the powers under the amended rule when the District Magistrate passed the order on October 26, 1942, it naturally follows that the District Magistrate had no powers to pass such an order under the * amended rule. In my opinion, the lower court has rightly relied on this ruling and hence its view is correct.

* O.P.9

17. The matter does not rest there only. The attachment is illegal on another ground. Before attaching the property of a person absconding under section 88 of the Criminal Procedure Code, a proclamation will have to be issued. It is common ground that no proclamation was issued in this case before the attachment by the Sub-Divisional Magistrate. That being so, the attachment is illegal. Thus, the attachment in question was illegal on two grounds. For these reasons I agree with the view taken by the lower court.

18. The next point taken on behalf of the Appellant was with respect to the liability or otherwise of the Government. The lower court held that the Province of Bombay was liable for damages relying on the principles laid down in the cases of Kailash Chandra Nag v. Secretary of State for India, I.L.R. 40 Calcutta, 452. The Secretary of State for India in Council v. Jagat Mohini Dassi, I.L.R. 28 Calcutta, 540 Wasappa bin Timmappa Songar v. The Secretary of State for India, I.L.R. 40 Bombay, 200 and the Secretary of State for India v. Ahalyabai Bhartar Narayan Kulkarni, 1938 Bombay, 454. This finding of the lower court was challenged for the Appellant and was it urged that the Sub-Divisional Magistrate who ordered the attachment disobeyed the statutory provisions and so he was liable for damages and not the State and hence the lower court's view was erroneous. In support of this contention reliance was placed on the cases of Secretary of State for India in Council v. Shreegobinda Chaudhuri, I.L.R. 59 Calcutta, 1289 and Ross v. The Secretary of State for India in Council. I.L.R.37 Madras, 55. On the

183 37

contrary, it was argued for the respondents that the attachment, being illegal, ensured to the State, that the property was at the disposal of the Government under section 88 of the Criminal Procedure Code and hence the Province of Bombay was liable to damages. The lower court after carefully examining the cases relied on by both the sides accepted the contentions of the Plaintiffs respondents repelling those of the Defendant-appellant and I do not see any reason to differ from that view. It is true that in the two cases relied on for the Appellant it is held that the Secretary of State for India is not liable for the act done by an officer of Government in the course of exercise of powers which cannot be lawfully exercised, save by the Sovereign power and not liable for the act of the District Magistrate on the ground that it was done by him in the exercise of statutory authority and not as the agent of Government. Similar view is taken in the case of Shivabhajan v. Secretary of State for India, I.L.R. 28 Bombay, 314. In the cases of Kailash Chandra Nag v. Secretary of State for India the case of Shivabhajan v. Secretary of State for India is referred to. But, the facts of the cases relied on for the Appellant are distinguishable from the facts of the present case. In the case of Shivabhajan v. Secretary of State for India, a police constable attached the property in pursuance of the statutory power vested in him by the Legislature and not by an order by the executive Government as it was attached by the order of the District Magistrate in the present case. Similarly, in Secretary of State for India in Council v. Shreegobinda Chaudhuri, the property was not detained by the Government as it was done in the present case. In Ross v. Secretary of State for India in Council the District Magistrate did the act in exercise of the statutory authority vested in him and not as an agent of Government. But, in that case the Police Sub-Inspector attached the property as an agent of the District Magistrate and not as an agent of the Government as is done in the present case. Thus, the principles laid down in the 3 rulings relied on for the Appellant are not applicable to the facts of the present case.

19. Then, the principles laid down in the rulings relied on by the lower court are fully applicable to the facts of the present case. In Kailash Chandra Nag v. Secretary of State for India the facts were as follows. The Plaintiff Kailash Nag was assessed to pay certain sums by a Deputy Magistrate. The District Magistrate rejected the Plaintiff's objection to the assessment. Subsequently a distress warrant was issued by the Sub-Divisional Officer of Jamalpore for realization of taxes assessed on him and he had to pay the assessed sum. Thereupon he instituted a suit against the Secretary of State for India in Council. On behalf of the Government it was contended that the assessment was not illegal and without jurisdiction and that the suit against the Government was not maintainable. On these facts it was held therein, "The amount not being illegally realized, a suit for the recovery thereof would lie against the Secretaryof State for India in Council." Thus the facts of this case are on all fours with the facts of the present case and the principle laid down therein fully governs the facts of the present case. As already pointed out above in this connection it may be noted that the case of Shivabhajan v. The Secretary of State for India is referred to in this case. Similar principle is laid down in the two Bombay Cases referred to by the lower court. In both of them only the Secretary of State for India in Council was made a party and not any of the officers concerned and it was held that the Government was liable to pay the damages. I think that the view taken by the lower court relying on the rulings detailed above was correct and that the rulings relied on for the appellant are not applicable to the facts of the present case and hence I do not see any reason to differ from the view taken by the lower court.

20. The third point taken up on behalf of the appellant was that the act of the Government officers is protected under section 270 of the Government of India Act and under section 17(1) of the Defence of India Act. Now, section 270 of the Government of India says down as follows :- " No proceedings

civil or criminal shall be instituted against any person in respect of any act done or purporting to be done in the execution of his duty as a servant of the Crown in India or Burma before the relevant date, except with the consent, in the case of a person who was employed in connection with the affairs of the Government of India or the affairs of Burma, of the Governor-General in his discretion, and in the case of a person employed in connection with the affairs of a Province, of the Governor of that Province in his discretion. " Thus, according to this section no suit can be instituted against any Government servant for his past acts. But in the present case the suit is not instituted against any Government officer but against the Governe ment itself. That being so, I agree with the lower court in holding that section 270 of the Government of India Act is not applicable to the facts of the present case. Similarly, there is no bar to the present suit under section 17(1) of the Defence of India Act. The said sub-section runs as follows :- " No suit, prosecttion or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder or orders issued under such rule". No doubt, this sub-section protects the Government servants for their acts. But the protection is given under certain conditions. If the act is done in good faith then only the Government servant is protected. In the present case, as already pointed out above, the District Magistrate issued the order Exhibit No.33 without any delegation. Further the Police Sub-Inspector attached the property without any proclamation. That being so, the Government servants did not act in good faith and hence there is no bar under section 17(1) of the Defence of India Act. Furthher, it may be noted that the suit is not against any of the Government servants but against the Government itself. That being so, section 17(1) is not applicable, inasmuch as it is applicable only to the Government servants and not to the Government. For these reasons I agree with the view taken by the lower court on the point.

83 189

21. The fourth point taken up on behalf of the Appellant was that the present suit is barred under section 17(2) of the Defence of India Act. Sub-section (2) of the said section runs as follows :- "Save as otherwise expressly provided under this Act, no suit or other legal proceeding shall lie against the Crown for any damage caused of likely or likely to be caused by anything in good faith done or intended to be done in pursuance of this act or any rules made thereunder or any orders issued under any such rule." No doubt, under this sub-clause the Government is protected if the act is done in good faith. In the present case as already pointed out above there was no good faith at all and the officers of the Government acted without due care and good faith. That being so, the suit against the Crown is not barred under under section 17(2) of the Defence of India Act.

22. Lastly, it was contended on behalf of the Appellant that the quantum of damages awarded by the lower court was rather excessive. On the other hand, the learned pleader for the Respondents urged that the amount of damages awarded by the lower court was very meagre, and that damages to the extent of Rs. 1500/- at any rate should have been awarded. In my opinion, the estimate of the damages awarded by the lower court appears to be quite fair and reasonable in view of the circumstances of the case. In awarding the damages the lower court had relied on the testimony of the Plaintiff No. 1 Exhibit No.43. No doubt, he has claimed a sum of Rs.2000/- by way of damages. It is true that the details of the amount claimed are not given in the plaint. But the Plaintiff No. 1 has given the said details in his deposition. He claims hire for his goods lorry for five months at the Government rate of Rs. 320 per month, according to which he was paid. Further, he lost the interest on Rs.11000/- for five months as it was lying with the Government. The amount of interest on the sum of Rs.11000/- comes to Rs. 250/-. Then Rs. 500/- for hire of the lorry for five months is quite inadequate in view of the Government rates as disclosed by the Plaintiff No. 1. According to the Government rates, the amount

85 2 191

of hire would have come to Rs. 1600/-. However, the lower court has awarded the same at the rate of Rs. 150/- per month. For all these reasons to me it appears that the damages awarded by the lower court are fair and reasonable. That being so, there is no substance in the contentions raised on both sides and I agree with the view of the lower court on this point also.

23. In the result, both the appeal and the cross-objections fail.

O R D E R.

The appeal and the cross-objections are dismissed with cost and the decree of the lower court is affirmed.

29th November 1946.

Sd. P.H.Gunjal.

District Judge.

"T R U E C O P Y"

Sd.

Clerk of the Court,
District Court, Kanara, Karwar.

"T R U E C O P Y"

For Collector of Kanara.

1945 87

Grounds of appeal in Appeal No. 189 of 1945.

G R O U N D S.

1. The decree of the lower court is contrary to law and not warranted by the evidence in the case.

2. The learned Civil Judge wrongly held that the attachment of moveable property complained of was without authority.

3. He wrongly held that the said attachment was not made lawfully and in good faith.

4. It was wrongly held that the plaint discloses any cause of action against the defendant.

5. It was wrongly held that the suit against the Defendant is not barred under section 17 clausse 2 of the Defence of India Act.

6. It was wrongly held th t the act of the several Government officers concerned are not protected under section 17(1) of the Defence of India Act, Judicial Officers Protection Act and section 270 of the Bovernment of India Act.

7. The learned judge was in error in considering that the order Exhibit No. 33 was an order under Rule 26(5)(B)(b) of the Defence of India Rules.

8. The learned judge was wrong in holding that the District Magistrate was not competent to pass an order under Rule 26(5)(B)(b) and that the previous delegation of 1941was ineffective.

9. The ruling in 46 Bombay Law Reporter page 495 was not properly considered.

10. Even if it be supposed that the District Magistrate made the report exhibit No. 33 without proper authority, it was wrongly held that Government was liable for the improper and unauthorised acts of the District Magistrate and other public servants concerned.

11. The learned Judge was wrong in not giving findings on issues Nos. 3 and 4. On a proper consideration of those issues he should have found them in favour of the defendant.

12. The learned judge was wrong in holding that the attachment was made in accordance with the orders issued by the executive

Government and not in pursuance of statutory provisions.

13. The learned Judge's view that there was an implied ratification or adoption of attachment by Government is clearly wrong.

14. He was wrong in holding that the Defendant was liable to pay damages.

15. He was wrong in holding that the Plaintiffs were entitled to any damages. The sum of Rs.750/- awarded is excessive. If at all, Plaintiffs were entitled only to nominal damages.

16. The several rulings on the points arising in the case have not been properly considered and appreciated.

17. The order as to costs is clearly wrong. Plaintiffs were not entitled to any costs. Defendant should have been awarded their full costs.

"TRUE COPY"

Sd.

Clerk of the Court,

District Court, Kanara, Karwar.

"TRUE COPY"

For Collector of Kanara.

1942 91

In the District Court of Kanara.

Civil Appeal No.189-45.

Cross-objections submitted on behalf of Plaintiffs-Respondents.

1. The damages to be awarded to Plaintiffs were not properly assessed by the lower court.

2. The lower court erred in decreeing the Plaintiffs' claim only to the extent of Rs. 750/-.

3. The different grounds for awarding higher damages were not properly taken into consideration.

4. Plaintiffs' evidence, not contradicted by any rival evidence for the defendant was wrongly not relied upon.

5. Damages at least to the extent of Rs.1500/- should have been awarded to the Plaintiffs.

"T R U E C O P Y"

Sd.

Clerk of the Court,
District Court, Kanara, Karwar.

"T H U E C O P Y"

For Collector of Kanara.

Application for copy applied for on 6th December Nineteen hundred and forty six.

Copy was ready on 16th December Nineteen hundred and forty six.

It was delivered on 21st December Nineteen hundred and forty six.

Sd.
Record Keeper.

Suits:

Kanara.
For damages for wrongful attachment.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 407
Bombay Castle, 13th January 1947.

Read Government Resolution, Legal Department No.9076, dated the 5th December 1945.

Endorsement from the Ex-District Government Pleader, Kanara No. 320, dated the 3rd December 1946- Stating that the First Appeal No.189 of 1945 filed by the Government the suit noted in the margin was dismissed by the District Judge, Kanara, Karwar on 29th November 1946, confirming the decree of the lower Court.

| |
|---|
| In the Court of the First Class Sub-Judge, Karwar.<br>Civil Suit No. 111 of 1944.<br>Mukund Narayan Prabhu, Sirurkar and 4 others. .. .. Plaintiffs;<br>Vs.<br>The Province of Bombay. .. Defendant.<br>Claim-Rs. 2,000/-. |

Letter from the Collector of Kanara, No.7342, dated the 26th December 1946.- Forwarding a copy of the letter from the Ex-District Government Pleader, Kanara, No.326, dated the 12th November 1945 and stating that he agrees with the Ex-District Government Pleader's view, that a Second Appeal may be filed against the decision of the District Judge, Kanara, dated the 29th November 1946.

RESOLUTION :- Sanction is accorded to the institution of a Second Appeal, in the High Court of Bombay, against the decision of the District Judge, Kanara, dated the 29th November 1946, on the lines of the brief accompanying Government Resolution, Legal Department No.236, dated the 9th January 1945.

By order of the Governor of Bombay,

Subd. for signature.

KBB 9/1.

R. M. Mehta

Original R.M. MEHTA,
Assistant Secretary to Government.

S.A.S.

To

The Home Department,
The Commissioner, Southern Division,
The Collector of Kanara, Karwar,
The Government Pleader, High Court, Bombay.

LK.

Issued 9/1.

Subd. after issue
File in S. Kan 1/45.
KBB 14/1 S.A.S. 14/1

Q.27795

Suits:
Kanara
For damages for wrongful attachment.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 85-63
Bombay Castle, 29th July 1949.

Read Government Resolution, Legal Department, No.407, dated the 13th January 1947.

No.3245 dated the 15th July 49

Letter from Government Pleader, High Court, Bombay, forwarding an uncertified copy of the High Court Judgment and stating that the Civil Appeal No.179 of 1947 filed by Government in the suit noted in the margin was decided by the High Court, Bombay, on 12th April 1949, when the following order was passed :-

In the Court of the First Class Sub-Judge, Karwar.
Civil Suit No.111 of 1944.
Mukund Narayan Prabhu, Sirurkar.
and 4 others. ..... Plaintiffs
Vs.
The Province of Bombay. ...Defendant.
Claim- Rs.2,000/-.

" The court confirms the decree of the Lower Appellate Court and dismisses the appeal with Costs."

RESOLUTION:- The result of the Appeal is recorded.

By order of the Governor of Bombay,

original

R.M.MEHTA.
Assistant Secretary to Government.

To

The Home Department,
The Commissioner, Southern Division,
The Collector of Kanera, Karwar.

Issued
UK. 22.7.

Submitted for signature

A.S.

Copy applied for on 9-7-49
Copy ready on 13-6-50
Copy delivered on 22-6-50
sent by V. P. P. Regd. Post on
Assistant Superintendent.

231 97

APPEAL No. 179 OF 1947 FROM APPELLATE DECREE.

THE PROVINCE OF BOMBAY.

(Original Defendant) .. .. .. .. .. *Appellant*:

*versus*

Mukund Narayan Prabhu, Shirurkar; and others. (Original Plaintiffs Nos. 1 to 5) .. .. .. .. .. *Respondents.*

Second Appeal against the decision of P. H. Ganjal, Esquire, District Judge, Kanara at Karwar in Appeal No. 189 of 1945 from the decision of H. P. Suryavanshi, Esquire, Civil Judge (Senior Division) at Karwar in Suit No. 111 of 1944.

Mr. K. G. Datar specially authorised Government Pleader for the Appellant.

Mr. D. R. Manerikar, Advocate for the Respondents.

(CORAM :—Gajendragadkar, J.)

12th April 1949.

*Oral Judgment.*—This appeal arises from a suit filed by the plaintiffs against the Province of Bombay claiming Rs. 2,000 as damages by way of compensation for illegal and wrongful attachment and seizure of movables from their house and shop. The plaintiffs and one Dayanand Prabhu, who was a practising lawyer at Karwar, were members of an undivided Hindu family. Plaintiffs Nos. 1 and 2 are the parents of Dayanand and the other plaintiffs are his brothers. On the 9th October 1942 the District Magistrate of Karwar issued an order under r. 26 of the Defence of India Rules for the arrest and detention of Dayanand. On the 26th October 1942 the said District Magistrate issued another order under r. 26(5-B) calling upon the said Dayanand to appear before the Sub-Divisional Magistrate within a month. A report of this order was sent to the Sub-Divisional Magistrate and he was directed to act against the property of Dayanand under ss. 87 and 88 of the Code of Criminal Procedure. Within the time mentioned in the order of the District Magistrate Dayanand did not appear. That is why on the 26th November 1942 the Sub-Divisional Magistrate issued a warrant for the attachment and seizure of movables and the said warrant was executed by the sub-Inspector by attaching movables from the house of Dayanand. This was done on the 8th February 1943. On the 9th February 1943 a similar warrant was executed in respect of the movables in the shop of the family at Ankola. Subsequently plaintiffs deposited Rs. 11,000 and took back the movables. Thereafter they gave notice to the Province of Bombay and filed the present suit.

The case for the plaintiffs was that the attachment and seizure of the movables was illegal for two reasons. They alleged that in issuing the original order against Dayanand the District Magistrate of Karwar had purported to act expressly under r. 26(5-B)(*b*) of the Defence of India Rules and it was their case that at that time the powers to act under the said rule had not been delegated to the said District Magistrate. They also challenged the validity of the attachment and seizure of these movables on the ground that the Sub-Divisional Magistrate who proceeded to carry out the order of the District Magistrate failed to comply with the provisions of s. 87 in that no proclamation was issued before the property was actually attached and seized under s. 88 of the Code. Both these grounds have been upheld by the Courts below. The Province of Bombay urged in defence that the Government was not liable for the act of the District Magistrate and the Sub-Divisional Magistrate and they also pleaded a bar of s. 17(2) of the Defence of India Act and a similar bar under s. 270 of the Government of India Act, and s. 17(1) of the Defence of India Act. These pleas were negatived by the Courts below. The result has been that the plaintiffs' suit has been decreed to the extent of Rs. 750 against the Province of Bombay. The Province of Bombay has now come to this Court in second appeal.

On behalf of the Province of Bombay three points have been urged before me by Mr. Datar. The first point that he took was that though the District Magistrate of Karwar had not been delegated the powers under the amended Defence of India Rule 26 (5-B) (*b*), he had been delegated the power under the earlier Rule 26 (5—B) and the order which was in fact passed in the present case is referable to r. 26(5-B) alone. The power to act under s. 26(5-B) as it originally stood had been delegated to the District Magistrate of Karwar on the 19th January 1941. By an amendment the original rule 26(5-B) was wholly substituted by the subsequent rule published by the notification on the 15th August 1942, and the power to act under this amended rule was delegated to the District Magistrate of Karwar on the 17th July 1943. It



Superintendent D. D. 9-6-1950
Rs. As. Ps. Fls. 22
Copying Charges. 2-12-0
Comparing charge 0-11-0
Total 3-7-0
Rupee three and annas seven only.

ms.as.ps.

K.#415. Sectioner:- Mr.D.T.Patwardhan 0--11-0 Fs.5½
Examiner:- Mr. R.C. Rawal
25-7-49. Reader:- Mr. V.R.Oza .. 0--3--0
30-7-49. paper charges:-- 0--0--3

Total Rs...0--14-3

Annas fourteen and pies three only.

Supdt.Decree Dept
/ -8-1949.

Date applied for on 9-7-49.
Copy ready on 1-8-49.
Copy delivered on 22-6-50
sent by V. P. Regd. Post on

Assistant Superintendent 21-6

In the High Court of Judicature at Bombay.

Tuesday the 12th day of April 1949.

Appeal No.179 of 1947 From Appellate Decree.

The Province of Bombay (Original Defendant).. .... Appellant.

Versus

1 Mukund Narayan Prabhu, Sirurkar,2 Rukmini kom Mukund Prabhu, Sirurkar,3 Gajanan Mukund Prabhu, Sirurkar, 4.Narayan Mukund Prabhu,Sirurkar, minor by his guardian and next friend Mukund Narayan Prabhu,Sirurkar; 5 Nagesh Mukund Prabhu,Sirurkar,minor by his guardian and next friend Mukund Narayan Prabhu Sirurkar

(Original Plaintiffs Nos.1 to 5).. .... Respondent.

Claim Rs. 750-0-0 for all purposes.

HIGH COURT APPELLATE SIDE BOMBAY
FILED 1949

The plaintiffs sued for awarding to them from the defend a sum of Rs.2000 as damages by way of compensation for illeg and wrongful attachment and seizure of movables from their house and shop and for costs.

The Original Suit No.111 of 1944 was decided by the Civil Judge (Senior Division) of Karwar who passed a decree for Rs. 750/- with proportionate costs.

The Appeal No.189 of 1945 of the District File was decid by the District Judge of Kanara at Karwar who confirmed the decree of the Court of first instance and dismissed the appeal and the cross objections with costs.

An appeal has been admitted in the High Court from the decision of the lower Court. Notice was ordered to issue by the Hon'ble Mr.Justice Bavdekar on the 18th day of March 1947.

The grounds of objection to the decision appealed against are:-

1). That it was an error to hold that the attachment of movables was legal.

2). That it was an error to hold that the Province of Bombay was liable to the plaintiffs in damages.

3). That it should have been held that the acts of Government Officers concerned were protected under Section 270 of the Government of India Act and Section 17(1) of the Defence of India Act.

4). That the suit was barred by section 17(2) of the Defence of India Act.

5). That plaintiffs' suit should have been dismissed with

costs throughout.

6). That the ~~declarati~~ delegation of power under the unamended rule should in the circumstances of this case be deemed to exist even as regards the amended rule.

7). That the ruling in Emperor V.Rayangouda has been misunderstood.

8). That the omission to issue a proclamation is an irregularity and would not by itself invalidate an attachment under section 88,Civil Procedure Code.

9). That it should have been held that the State was not liable for the acts of the Sub-Divisional Magistrate. The lower Court has misunderstood the law on the point.

10). That the damages awarded are not fair and reasonable.

Coram:- Gajendragadkar J.

For the reasons stated in the accompanying Judgment, the Court confirms the decree of the lower appellate Court and dismisses the appeal with costs.

Sd/- S.H.Belavadi
Deputy Registrar.

12th day of April 1949.

Bill of costs in the High Court.

By the Appellant:--

| | Rs.as.ps. |
|---|---|
| Stamps for memorandum of appeal. | 70--5-0 |
| Stamps for copies of decrees and Judgments. | 3-12-0 |
| Stamps for vakalatnama (GovtPleader appears). | 0--0-0 |
| Bhatta for process. | 6--0-0 |
| Sectioner's Fee. | 14-15-0 |
| Advocate's Fee. | 45--0-0 |
| Printing charges. | 11--0-0 |
| Translation fee. | 8--8-0 |
| Total Rs... | 159--8-0 |

By the Respondents:--

| | Rs.as.ps. |
|---|---|
| Stamps for vakalatnama. | 2--8-0 |
| Advocate's Fee. | 45--0-0 |
| Total Rs... | 47--8-0 |

Sd/- S.H.Belavadi
Deputy Registrar.
The 12th day of April 1949

(SEAL)

True Copy

For Deputy Registrar.

The 18 - RC Rau - day of August 1949.

S. Kan 1/45
2/46